Nos. 94-631, 94-797 and 94-929

Supreme Court, U.S.
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1995
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In The

Supreme Court of the United States

October Term, 1994

ZELL MILLER, ET AL., *Appellants*
vs.
DAVIDA JOHNSON, ET AL., *Appellees*

LUCIOUS ABRAMS, JR., ET AL., *Appellants*
vs.
DAVIDA JOHNSON, ET AL., *Appellees*

UNITED STATES OF AMERICA, *Appellant*
vs.
DAVIDA JOHNSON, ET AL., *Appellees*

On Appeal From The United States District Court For The Southern District Of Georgia

JOINT APPENDIX

MICHAEL J. BOWERS
Attorney General of the State of Georgia
DENNIS R. DUNN
Senior Assistant Attorney General
DAVID F. WALBERT
Special Assistant Attorney General
Counsel of Record
WALBERT & HERMANN
100 Peachtree Street
Suite 1010
Atlanta, Georgia 30303
404/523-5000
Counsel for Appellants Miller, et al.

GERALD R. WEBER
American Civil Liberties Union of Georgia
ELAINE R. JONES
THEODORE M. SHAW
JACQUELINE A. BERRIEN
NAACP Legal Defense and Educational Fund, Inc.
LAUGHLIN MCDONALD
Counsel of Record
MARY WYCKOFF
NEIL BRADLEY
American Civil Liberties Union Foundation, Inc.
44 Forsyth Street, N.W.
Suite 202
Atlanta, Georgia 30303
404/523-2721
Counsel for Appellants Abrams, Jr., et al.

Counsel Listing Continued on Reverse

Jurisdictional Statements Filed October 6, 1994, November 2, 1994 and November 21, 1994
Probable Jurisdiction Noted January 6, 1995

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

Counsel Listing (continued)

DREW S. DAYS, III
Solicitor General
Department of Justice
Washington, D.C. 20530
202/514-2217

Counsel of Record for
Appellant United States

A. LEE PARKS
Counsel of Record
LARRY H. CHESIN
KIRWAN, GOGER, CHESIN
& PARKS, P.C.
75 Fourteenth Street
2600 The Grant
Atlanta, Georgia 30309
404/873-8000

Counsel for Appellees

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

TABLE OF CONTENTS

Page

Relevant docket entries in the United States District Court for the Southern District of Georgia, Augusta Division 1

SUBSTITUTE JOINT SUBMISSION of the Parties (excerpts) 9

ORDER granting in part and denying in part Plaintiffs' Motion to Compel Discovery from Defendant Intervenor United States, inter alia 34

ORDERS noting probable jurisdiction and consolidating appeals 49

JOINT EXHIBITS OF ALL PARTIES:

No. 1 – Map and Demographic Chart of Georgia Congressional Districts 1992 51

No. 2 – Map and Demographic Chart of Proposed Congressional Redistricting Plan SB705CONF1 ... 54

No. 3 – Map and Demographic Chart of Proposed Congressional Redistricting Plan SB2EXASPASS .. 57

No. 4 – Map and Demographic Chart of Proposed Congressional Districts 2, 5 and 11 designated BMCCONGRESS 60

No. 8 – Map and Demographic Chart for Proposed Congressional Redistricting Plan designated SREDRAW2 62

No. 9 – Georgia House Reapportionment Guidelines 65

No. 10 – Georgia Senate Reapportionment Guidelines 72

TABLE OF CONTENTS – Continued

Page

No. 12 – Map of Georgia Congressional Districts 1965-1971 78

No. 14 – Map of Georgia Congressional Districts 1972-1980 79

No. 15 – Map of Georgia Congressional Districts 1982-1990 80

No. 16 – Map of Georgia Congressional Districts 1933-1965 81

DEFENDANTS' JOINT EXHIBIT:

No. 11 – Map of Proposed Georgia Congressional Districts Designated TEMPLATE 82

STATE OF GEORGIA (Appellants Miller, Howard & Cleland) EXHIBITS:

No. 83 – Municipal Boundary Map of Dalton, Georgia 84

No. 87 – Municipal Boundary Map of Gainesville, Georgia 85

No. 92 – Municipal Boundary Map of Marietta, Georgia 86

No. 93 – Municipal Boundary Map of Milledgeville, Georgia 87

No. 95 – Municipal Boundary Map of Rome, Georgia 88

No. 100 – Municipal Boundary Map of Valdosta, Georgia 89

No. 157 – Population Density Map of Georgia Eleventh Congressional District 90

TABLE OF CONTENTS – Continued

Page

No. 158 – Population Density Map of Georgia First Congressional District 91

No. 159 – Population Density Map of Georgia Second Congressional District 92

No. 160 – Population Density Map of Georgia Third Congressional District 93

No. 164 – Population Density Map of Georgia Seventh Congressional District 94

No. 165 – Population Density Map of Georgia Eighth Congressional District 95

No. 166 – Population Density Map of Georgia Ninth Congressional District 96

No. 167 – Population Density Map of Georgia Tenth Congressional District 97

UNITED STATES' EXHIBITS:

No. 76 – Plans approved by Georgia House and Senate 98

PLAINTIFFS' EXHIBITS:

No. 2 – Letter dated January 21, 1992 from United States Department of Justice to State of Georgia objecting to first congressional redistricting plan 99

No. 3A – Letter dated March 3, 1992 from State of Georgia to United States Department of Justice submitting second congressional redistricting plan 108

TABLE OF CONTENTS – Continued

Page

No. 4 – Letter dated March 20, 1992 from United States Department of Justice to State of Georgia objecting to second congressional redistricting plan 120

No. 16A – Table: Split Precincts in 1992 Georgia Congressional Redistricting 127

No. 16B – Table: History of Split Municipalities in Georgia Congressional Redistricting 128

No. 17 – Race Map of Georgia 130

No. 24 – Charts reflecting population distribution and land mass (2 tables) 131

No. 25 – Graphic Depiction of Population Density ... 133

No. 29 – Map of Georgia Second Congressional District 134

No. 29A – Chart reflecting population distribution, land mass, split counties and municipalities in Second District 135

No. 32 – Map of Houston/Peach County area within the Second Congressional District 137

No. 38 – Race Map of Houston/Peach County area within the Second Congressional District 138

The following opinions, decisions, laws and exhibits have been omitted in printing this joint appendix because they appear on the following pages in the Appendix to the Jurisdictional Statement of Appellants Miller, et al. (No. 94-631):

Opinion of the District Court in *Johnson v. Miller* Civil Action No. 194-008 (S.D. Ga. 1994) .....App. 1

TABLE OF CONTENTS – Continued

Page

Section 2 of the Voting Rights Act, 42 U.S.C. § 1973 .....App. 103

Section 5 of the Voting Rights Act, 42 U.S.C. § 1973(c) .....App. 103

Map of Georgia's Eleventh Congressional District .....App. 106

Map of North Carolina's Twelfth Congressional District.....App. 107

Map of Florida's Third Congressional District....App. 108

Map of Louisiana's Fourth Congressional District .....App. 109

The following opinions, decisions, orders, laws and exhibits have been omitted in printing this joint appendix because they appear on the following pages in the Appendix to the Jurisdictional Statement of Appellants Abrams, et al. (No. 94-797):

Order denying Motion to Dismiss for Lack of Standing .....App. 103

Fourteenth Amendment of the Constitution of the United States, Equal Protection Clause.....App. 115

Statement of Judicial Notice of the District Court in *Johnson, et al. v. Miller, et al.*, 194-008 (S.D. GA 1994).....App. 119

The following exhibits have been omitted in printing this joint appendix because they appear on the following pages in the Appendix to the printed Motion to Affirm of Appellees:

Map of Population Demographics.....App. 1

TABLE OF CONTENTS – Continued

Page

Map of Portions of Chatham County, Georgia . . . App. 2
Map of Portions of Effingham County, Georgia . . App. 3
Map of Portions of Richmond County, Georgia . . App. 4
Map of Portions of DeKalb County, Georgia . . . . . App. 5

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
Augusta Division

JOHNSON, et al.

Plaintiffs,

v.

MILLER, et al.

Defendants,

and

UNITED STATES OF AMERICA and
LUCIOUS ABRAMS, JR., et al.

Intervenor Defendants.

FILED: January 13, 1994

CIVIL DOCKET FOR CASE NO. 94-CV-8 [194-008]

* * *

1/13/94	1	COMPLAINT for declaratory and injunctive relief; Filing Fee $ 120.00 Receipt # 156566 (sbc) [Entry date 01/14/94]

* * *

1/28/94	11	ORDER of designation of Three-Judge Court; designated are Circuit Judge J. L. Edmondson, and District Judge B. Avant Edenfield to sv with the Requesting Judge, Dudley H. Bowen, Jr. (signed by Chief Judge B. Avant Edenfield and Judge James Edmondson (sbc) [Entry date 02/08/94]

* * *

3/10/94 25 ANSWER to Complaint by Thomas Murphy (Attorney Nicholson) (sbc)

* * *

3/18/94 36 MOTION by Davida Johnson, Pam Burke, Henry George Deloach, George Seaton for Temporary Restraining Order, for Preliminary Injunction to move the filing period for candidates to the United States House of Representatives, to enjoin further election proceedings for the United States House of Representatives from the State of Georgia under the existing congressional redistricting plan with brief in support. (sbc) [Entry date 03/21/94]

* * *

3/30/94 39 ORDER granting [16-1] motion to Intervene as a party deft, granting [13-1] motion for lv to Intervene as defts, mooting [32-1] motion for Leave to File supplemental brief in opp to private citizens to intervene, mooting [12-1] motion for Leave to File reply brief, Motion Hearing set for 9:00 4/18/94 for [36-2] motion for Preliminary Injunction to move the filing period for candidates to the United States House of Representatives, set Answer deadline to 4/7/94 for United States; directing Clk to file the Abrams applicants' proposed answer in intervention. (signed by Judge Dudley H. Bowen, Jr.); copies served. (sbc)

* * *

3/30/94	41	ANSWER to Complaint by Lucious Abrams, Jr., G.L. Avery, William Gary Chambers, Sr., Judy Lammers, Rita Valenti, Karen Watson. (sbc) [Entry date 03/31/94]
		* * *
4/1/94	45	ANSWER to Complaint by Zell Miller, Pierre Howard, Max Cleland (Attorney Dennis Robert Dunn, David F. Walbert) (ljf)
		* * *
4/7/94	52	ANSWER to Complaint by United States. (sbc)
		* * *
4/18/94	--	Motion hearing held re: [36-2] motion for Preliminary Injunction to move the filing period for candidates to the United States House of Representatives by George Seaton, George DeLoach, Henry Zittrouer, Pam Burke, Davida Johnson. Court Reporter: Richard Dueringer; there will be no ruling on the merits of the case; the Court would like a trial on the merits completed before the July primaries. (sbc) [Entry date 04/19/94]
4/19/94	--	Motion hearing continued re: [36-2] motion for Preliminary Injunction to move the filing period for candidates to the United States House of Representatives by George Seaton, George Deloach, Henry Zittrouer, Pam Burke, Davida Johnson. Court Reporter: Richard Dueringer; pltfs' mot for preliminary injunction is denied; ruling read into the

record by Judge Edmondson; Ord to be entered by the Court; defts will not present evidence in this hearing; proposed trial schedule, pretrial order due 6/13/94, pretrial conference set 6/23/94, trial set 7/18/94-7/25/94. (sbc)

* * *

4/19/94 74 ORDER denying [36-1] motion for Temporary Restraining Order, denying [36-2] motion for Preliminary Injunction to move the filing period for candidates to the United States House of Representatives, denying [36-3] motion to enjoin further election proceedings for the United States House of Representatives from the State of Georgia under the existing congressional redistricting plan (signed by Judge James L. Edmondson); copies served. (sbc)

* * *

5/2/94 78 TRANSCRIPT of proceedings before Honorable Dudley H. Bowen, Jr., Honorable Chief Judge B. Avant Edenfield, and Honorable James L. Edmondson for dates of 4/18/94 and 4/19/94 in Augusta, Georgia. (sbc)

* * *

6/6/94 118 ORDER granting [106-1] motion for expedited decision respecting mot to compel discv from deft intervenor USA, granting in part, denying in part [87-1] motion to Compel discv from deft Intervenor USA (signed by Judge Dudley H. Bowen, Jr.); copies served. (sbc)

* * *

6/13/94 126 ORDER granting in part and denying in part the motion of the United States, filed in the USDC for the District of Columbia and referred to this Court for disposition, for a protective order regarding the depsn of John Dunne (signed Judge Dudley H. Bowen Jr.); copies served. (sbc) [Entry date 06/14/94]

* * *

6/14/94 128 ORDER dismissing as moot [86-1] motion to Compel defts resp to interrogs and requests for prod of doc, granting [89-1] motion for Leave to file Amicus Curiae Brief, granting [101-1] motion for Leave to File reply brief and attached affidavit with exhibit and memo in support thereof, granting [92-1] motion to amend [1-1] complaint to correct if actual error in the complaint with regard to Pltf DeLoach, denying [79-1] motion to dismiss George DeLoach as a plaintiff, signed by Dudley H. Bowen, Jr.); copies served. (sbc)

* * *

7/21/94 -- Bench trial held; Court Reporter: Lora Carter; The preliminary injunction record will be included in the trial record; Stipulations will be a part of the record with ability of the lawyers to raise material questions; mot in limine by DOJ regarding evidence is denied w/o prej; mot to dism claim against USA is denied; pltfs' cnsl asked the Crt to inscribe the rule of

sequestration – so allowed, with instructions to cnls to consider the parameters of this request. (sbc) [Entry date 07/27/94]

7/22/94 -- Bench trial continued; Court Reporter: Lora Carter; Court, at request of pltfs' cnsl, w/drew rule of sequestration. (sbc) [Entry date 07/27/94]

* * *

7/23/94 -- Bench trial continued; Court Reporter: Lora Carter; Crt intends to conclude this case by 8/5/94. (sbc) [Entry date 07/27/94]

7/25/94 -- Bench trial continued; Court Reporter: Lora Carter; sequestration not in effect for general witnesses. (sbc) [Entry date 08/01/94]

7/26/94 -- Bench trial continued; Court Reporter: Lora Carter; the Court, through Judge Edmondson, read to cnsl the Judicial notice taken by the Crt as to Georgia's discrimination history against the black race. (sbc) [Entry date 08/01/94]

7/26/94 192 STATEMENT OF JUDICIAL NOTICE; Court Exhibit #2 of trial exhibits to be made a part of the record. (sbc) [Entry date 08/03/94]

7/27/94 -- Bench trial continued; Court Reporter: Lora Carter; the matter of certain witnesses having been threatened will be referred to the United States Attorney; offer of proof will be accepted on 7/28/94 in re Howard Schretter; in re the expert reports of Dr. Marsha Darling, the Crt

will receive the revised report as an offer of proof. (sbc) [Entry date 08/01/94]

7/28/94 -- Bench trial continued; Court Reporter: Lora Carter; Crt instructed cnsl to file conclusion of law, supported by citations of authority by 8/8/94. (sbc) [Entry date 08/01/94]

* * *

9/12/94 205 MEMORANDUM OPINION AND ORDER; Ct grants pltf's request for injunctive relief and will impose a revised plan. Congressional elections in the Eleventh District are enjoined until further order. Ct reserves decision and Jurisdiction to reconfigure the Eleventh Congressional District; Ct also reserves decision and jurisdiction to order required modifications to the First and Tenth Districts as the need arises. (signed by Judge Dudley H. Bowen Jr. and Chief Judge B. Avant Edenfield; dissenting opinion by Judge Edmondson); copies served. (bmm) [Entry date 09/14/94]

* * *

9/14/94 207 NOTICE OF APPEAL to U.S. Supreme Court by Zell Miller, Pierre Howard, Max Cleland; copies served. [205-1] order (bmm)

9/14/94 208 NOTICE OF APPEAL to U. S. Supreme Court by Lucious Abrams, Jr., G. L. Avery, William Gary Chambers Sr., Karen Watson. FILING FEE $ 5.00 RECEIPT # 160466; copies served. [205-1] order (bmm)

* * *

9/20/94 212 NOTICE OF APPEAL by United States to the United States Supreme Court. copies served. [205-1] order (sbc) [Entry date 09/21/94]

9/22/94 213 AMENDED NOTICE OF APPEAL by United States to the Supreme Court of the United States. copies served. [205-1] order (sbc)

* * *

9/26/94 217 AMENDED NOTICE OF APPEAL by Zell Miller, Pierre Howard, Max Cleland to the United States Supreme Court. copies served. [205-1] order (sbc)

SUBSTITUTE JOINT SUBMISSION OF THE PARTIES

* * *

EXHIBIT A JOINT STATEMENT OF UNDISPUTED FACTS

* * *

A. No Fact or Materiality Dispute

1. Pursuant to the results of the 1980 Decennial Census, the State of Georgia was entitled to ten Members in the United States House of Representatives. Due to the population increase recorded by the 1990 Decennial Census, the State of Georgia is now entitled to 11 members in the United States House of Representatives.

2. The increase in the size of Georgia's Congressional Delegation following the 1990 Decennial Census required the State of Georgia to redistrict the State's Congressional districts so that each of the 11 Congressional districts would have approximate equality in population.

3. The 1990 Decennial Census reports that the State of Georgia's population is 6,478,216 persons of whom 1,746,565 (26.96%) are black persons. Abrams Exhibit 1.

4. The total voting age population of Georgia is 4,750,913, of which 3,490,414 (73.5%) are white and 1,168,142 (24.6%) are black. 1990 Census, Table 1, at p. 1. Abrams Exhibit 1.

5. The Office of the Georgia Secretary of State compiles and maintains records of the number of registered voters in the State of Georgia, by race. Those records show that as of the November 1992 general election there were 3,177,061 persons registered to vote in Georgia, of

whom 698,305 (21.98%) were black. The 1990 Census reported a voting age population in Georgia of 4,750,913 of whom 1,168,142 were black and 3,490,414 were white. Based upon these figures, 59.8 percent of the state's black voting age population was registered to vote, as compared to 70.22 percent of the state's white voting age population.

6. The State of Georgia is subject to the preclearance procedures of § 5 of the Voting Rights Act, 42 U.S.C. § 1973 *et seq*. Accordingly, redistricting legislation enacted by the Georgia Legislature cannot take effect and is unenforceable as law without either a judgment from the U.S. District Court for the District of Columbia declaring that the redistricting legislation "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color" or administrative preclearance from the U.S. Attorney General.

7. The reapportionment committees in the Georgia House and Senate began to consider the current reapportionment (based on the 1990 census) during the 1991 session of the General Assembly. The members of the House and Senate Reapportionment Committees are set forth in State Exhibits 1 & 2.

8. The Senate Reapportionment Committee met on January 29, 1991, and procedural rules were generally agreed upon at that time. A meeting schedule was also adopted. The committee members discussed public accessibility and participation. Linda Meggers of the Reapportionment Services Office gave a census update.

9. On January 31, 1991, the House reapportionment committee met. Rules were discussed and unanimously

adopted. The committee members also discussed scheduling and hearings to obtain public input. Linda Meggers gave the committee a census update.

10. The next Senate reapportionment committee meeting was February 4, 1991, and among others, Attorney General Michael Bowers and legislative counsel Sewell Brumby spoke. They addressed the pending voting litigation (the *Brooks* judicial and majority vote cases) and various aspects of the Voting Rights Act, including Sections 2 and 5.

11. On February 6, 1991, the House reapportionment committee met. Sewell Brumby, among others, addressed the committee and generally discussed the reapportionment process, including Sections 2 and 5 of the Voting Rights Act.

12. It was then anticipated that a special session for reapportionment of the State House, State Senate and congressional districts would be held later in 1991. At its February 20, 1991 meeting, the House reapportionment committee decided that it would conduct all of its public hearings before the committee itself drew any plans, which they wanted to try and do in June.

13. On February 27, 1991, the congressional subcommittee of the House Reapportionment Committee unanimously adopted guidelines. The Senate subcommittee met and adopted guidelines substantially similar to those of the House on February 28, 1991.

14. On February 28, 1991, both the House and Senate reapportionment committees adopted guidelines for

congressional and State legislative reapportionment. Copies of these guidelines is State Exhibits 3 & 4.

15. These guidelines provided for public hearings throughout the State to receive input from all sectors of the public. General guidelines required, among other things, that all reapportionment maps follow census geographic boundaries and that they be accompanied by statistical documents showing total population and the minority population for each proposed district.

16. These guidelines required that reapportionment plans adhere to the requirement of one person, one vote.

17. One of these guidelines also required that reapportionment plans not dilute minority voting strength and that plans comply with Sections 2 and 5 of the Voting Rights Act.

18. Further guidelines stipulated that all districts be composed of contiguous areas, and that areas which met only at points were not to be considered contiguous.

19. Another guideline of the House reapportionment committee stipulated that, if the first five guidelines (including those set forth hereinabove) were met, then efforts to maintain the integrity of political subdivisions, maintaining the cores of existing districts, and avoiding pitting incumbents against one another, could be taken into consideration.

20. The final general guideline of the House reapportionment committee was that local voting precinct boundaries should serve as the basic district building blocks so as to minimize voter confusion and the cost of election administration. When precinct boundaries were

broken, this guideline stipulated that the district lines should follow census block information.

21. Public hearings were then held throughout the State of Georgia where the input of any and all citizens who wished to speak or submit written information was received. All but one of these public hearings occurred between April 22 and May 21, 1991. The other one was held August 19, 1991. The meetings were held under the auspices of the House and Senate Reapportionment Committees sitting together.

22. Plans and ideas were submitted by members of the public at the public hearings. The House and Senate Reapportionment Committees met on a number of occasions to consider the plans after the conclusion of the public hearings.

23. In addition, a special session of the General Assembly was held from August 19 to September 5, 1991 for the purpose of adopting reapportionment plans, congressional districts and for the State, House and Senate.

24. During the public hearings, the work sessions of the Reapportionment Committees, and the special reapportionment session of the General Assembly, a great many congressional reapportionment plans were proposed and introduced.

25. The alternative plans or partial plans developed during the reapportionment process included or proposed between one and three majority black districts.

26. Between October 1991 and April 1992, three Congressional redistricting plans were submitted on

behalf of the State of Georgia to the U.S. Attorney General for preclearance pursuant to the Voting Rights Act. All of these plans were enacted by the Georgia General Assembly and approved by the Governor prior to their submission.

27. The first congressional reapportionment plan enacted by the special session and signed into law by the Governor was designated SB2EXASPASS. That plan is depicted in State Exhibit 65. The demographics of this plan are as follows:

District Number	Total Pop % Deviation	Black Pop % of Total	VAP % of Total	Black VAP % of VAP
1	588541 -0.07	179809 30.55	426558 72.48	118631 27.81
2	587346 -0.27	231843 39.47	415158 70.68	146861 35.37
3	594388 0.93	151788 25.54	429219 72.21	100115 23.32
4	583712 -0.89	57366 9.83	448139 76.77	41316 9.22
5	591871 0.50	367747 62.13	440208 74.38	254608 57.84
6	589283 0.06	36305 6.16	442764 75.14	26366 5.95
7	593007 0.69	80689 13.61	434613 73.29	53831 12.39
8	593485 0.77	160797 27.09	429481 72.37	105418 24.55
9	589420 0.08	21520 3.65	439083 74.49	15164 3.45
10	583663 -0.89	104932 17.98	430351 73.73	70720 16.43
11	583500 -0.92	353769 60.63	415339 71.18	235112 56.61
Totals	6478216	1746565	4750913	1168142

Number of Districts:	11	
Members Per District:	1	
Ideal District Size:	588929	
Average Deviation (%):	0.55	
Deviation Range (%):	-0.92	to 0.93
Overall Deviation (%):	1.85	

28. One of the purposes underlying the drawing of the eleventh congressional district in this plan was to attempt to bring together in that district a significant number of African-American voters in order to increase the opportunity of African-American voters to elect a candidate of their choice.

29. The first Congressional redistricting plan was submitted to the State of Georgia to the Department of Justice ("DOJ") on or about October 1, 1991. See Plaintiffs' Exhibit 1. The U.S. Attorney General objected to the first Congressional redistricting plan offered by the State of Georgia and refused preclearance by letter dated January 21, 1992. See Plaintiffs' Exhibit 2; State Exhibit 6.

30. The U.S. Attorney General stated in his objection letter that the State of Georgia had not carried its burden of proof under Section 5. The objection letter also made several specific comments concerning the congressional reapportionment plan. *Id.*

31. In response to the U.S. Attorney General's objection to the configuration for the Second District and the Eleventh Congressional Distirct [sic] as proposed by the State of Georgia in its first submission to the DOJ, Georgia Attorney General Michael J. Bowers stated his disagreement with the DOJ's position in his letter of March 3, 1992.

32. In 1991 and 1992, Oscar N. Persons served as General Counsel for the Georgia Republican Party, and further served as a Republican Party representative on the State Board of Elections. In 1991 and 1992, Mr. Persons was assisted in his efforts on behalf of the Georgia

Republican Party by Frank B. Strickland. These individuals jointly filed a Comment under Section 5 to the DOJ, as counsel for a Georgia non-profit corporation named "Georgians for Fair Redistricting, Inc.," wherein they sought to enhance black voting strength in three Congressional districts. They sought to shield this Comment from disclosure under the Freedom of Information Act. See Plaintiffs' Exhibit 31.

33. On February 12, 1992, the case of *Jones v. Miller,* 1:92-CV-0330-JOF was filed in the U.S. District Court, Northern District of Georgia. See Plaintiffs' Exhibit 32. The Complaint sought to have the Court impose the "maximum number of majority black districts." (Complaint, p. 4.). Messrs Persons and Strickland were attorneys of record for the Plaintiffs.

34. Subsequent to the DOJ objection of January 21, 1992, many other plans were introduced and considered by the reapportionment committees and the House and Senate themselves. A new plan was ultimately adopted by the conference committee on February 27, 1992. This second plan was enacted and signed into law by the Governor. This plan is depicted in State Exhibit 68.

The demographic breakdown of this plan is as follows:

District Number	Total Pop % Deviation	Black Pop % of Total	VAP % of Total	Black VAP % of VAP
1	594161 0.89	178895 30.11	430559 72.47	117944 27.39
2*	583230 -0.97	286629 49.15	409358 70.19	184258 45.01
3	593692 0.81	110703 18.65	430538 72.52	73441 17.06
4	588293 -0.11	67968 11.55	448179 76.18	48225 10.76
5	586485 -0.41	365206 62.27	440910 75.18	253413 57.47
6	587116 -0.31	35366 6.02	438845 74.75	25567 5.83
7	588073 -0.15	75813 12.89	431941 73.45	50533 11.70
8	590739 0.31	132546 22.44	427279 72.33	84338 19.74
9	586222 -0.46	21516 3.67	436725 74.50	15161 3.47
10	591987 0.52	108029 18.25	438898 74.14	73152 16.67
11	588218 -0.12	363894 61.86	417681 71.01	242110 57.97
Totals	6478216	1746565	4750913	1168142

Number of Districts:	11	
Members Per District:	1	
Ideal District Size:	588929	
Average Deviation (%):	0.46	
Deviation Range (%):	-0.97	to 0.89
Overall Deviation (%):	1.86	

*Without Fort Benning, black percentage is 50.00 percent population and black VAP is 45.82 percent.

35. This plan was submitted to the Department of Justice pursuant to Section 5 on or about March 3, 1992 (see Plaintiffs' Exhibit 4), but it was objected to by U.S. Attorney General on March 20, 1992. A true and authentic copy of that objection letter is State Exhibit 7; Plaintiffs' Exhibit 6. The U.S. Attorney General stated in his objection letter that the State of Georgia had not carried its burden of proof under Section 5. The objection letter also made several specific comments concerning the congressional reapportionment plan. *Id.*

36. The General Assembly enacted a third plan on March 31, 1992, and it was submitted to the Department of Justice on April 1, 1992. This plan was identified as CONGRESS.C1992 also known as HB1657. The plan was precleared under Section 5, it was used for the 1992 congressional elections, and it is the plan now before this court.

37. This plan is depicted in State Exhibit 66, and the demographics of this plan are as follows:

District Number	Total Pop % Deviation	Black Pop % of Total	VAP % of Total	Black VAP % of VAP
1	589540 0.10	133615 22.66	429073 72.78	87199 20.32
2*	591740 0.48	335082 56.63	415807 70.27	217571 52.32
3	591328 0.41	105263 17.80	429343 72.61	69800 16.26
4	588293 -0.11	67968 11.55	448179 76.18	48225 10.76
5	586485 -0.41	365206 62.27	440910 75.18	253413 57.47
6	587118 -0.31	35366 6.02	438847 74.75	25567 5.83
7	588071 -0.15	75813 12.89	431939 73.45	50533 11.70
8	591574 0.45	124234 21.00	427417 72.25	78508 18.37
9	586222 -0.46	21516 3.67	436725 74.50	15161 3.47
10	591644 0.46	106916 18.07	439254 74.24	72631 16.54
11	586201 -0.46	375586 64.07	413419 70.53	249534 60.36
Totals	6478216	1746565	4750913	1168142

Number of Districts: 11
Members Per District: 1

Ideal District Size: 588929
Average Deviation (%): 0.35
Deviation Range (%): -0.46 to 0.48
Overall Deviation (%): 0.94

*Without Fort Benning, black percentage is 57.83 percent population and black VAP is 53.46 percent.

38. On April 2, 1992, the U.S. Attorney General accepted the third proposed Congressional redistricting plan submitted by the State of Georgia as being in compliance with § 5 of the Voting Rights Act. See Plaintiffs' Exhibit 9. Said plan as later amended is presently embodied in O.C.G.A. § 21-2-4.

39. This final plan, CONGRESS.C1992, received the minimum 91 votes necessary for passage in the House of Representatives. The ninety-first vote was cast by the Speaker of the House, Representative Thomas Murphy. A copy of the March 31, 1992 roll call vote of the Georgia House of Representatives is attached as State Exhibit 5.

40. At the time this plan was enacted, the State of Georgia had been sued in the Northern District of Georgia by plaintiffs challenging the old reapportionment on the basis of one person/one vote deviations. A hearing on plaintiff's preliminary injunction motion was scheduled April 3, 1992, the week after the end of the legislative session. *Jones v. Miller,* (No. 1-92-CV-330-JOF (N.D.Ga.))

41. At no time in the Congressional redistricting process following the 1990 Decennial Census did the State of Georgia seek any judicial remedy authorized under the Voting Rights Act. The State was litigating a § 5 declaratory judgment action it had initiated with respect to the *Brooks* judicial litigation.

42. The state acknowledges that race was a significant consideration in the configuration of the Eleventh

Congressional District, including being a consideration in the inclusion of certain portions of DeKalb County, the City of Augusta, and the City of Savannah in the Eleventh Congressional District.

43. In the 1992 Congressional elections in Georgia, three black representatives were elected to Congress, Sanford Bishop in the Second District, John Lewis in the Fifth District and Cynthia McKinney in the Eleventh District.

44. In the 1992 general Congressional Democratic Primary Election, four African-American candidates received 74.8% of the total vote in the Eleventh District. Cynthia McKinney individually received 31.2% of the vote. The sole white candidate, George DeLoach, received 25.2% of the vote. See plaintiffs' Exhibit 17 and 18.

45. Because no candidate received a majority of the votes cast in the 1992 general Democratic primary election for the Eleventh Congressional District, the two top vote-getters, McKinney and DeLoach competed in an August 11, 1992, primary runoff election. McKinney became the Democratic nominee, winning 56.4% of the vote compared to 43.6% of the vote for DeLoach.

46. In the 1992 General Election for the Eleventh Congressional District, Cynthia McKinney ran as a Democrat against a white Republican, Woodrow Lovett. McKinney received 73.1% of the vote in such election. Lovett received 26.9%.

47. Democratic candidate Cynthia McKinney was a member of the Georgia General Assembly when she ran for the U.S. Congress from the Eleventh Congressional

District in 1992. George DeLoach, the Democratic candidate who lost to McKinney in the primary runoff, was the mayor of Waynesboro, Georgia, at the time. According to the 1990 census, Waynesboro, Georgia, has a total population of 5,701. Republican candidate Woodrow Lovett had never run for public office prior to his 1992 bid for election to the U.S. Congress for Georgia's Eleventh District.

48. In the 1992 general primary election for the Eleventh Congressional District, 83,868 votes were cast in the Democratic primary and 5,527 votes were cast in the Republican primary. In the 1992 primary runoff election for the Eleventh Congressional District, 69,690 votes were cast in the Democratic runoff and 3,420 votes were cast in the Republican runoff. In the 1992 general election for the Eleventh Congressional District, 120,168 votes were cast for the Democratic candidate, and 44,221 votes were cast for the Republican candidate. More than eight times as many votes were cast for the Republican candidate in the general election than were cast for the Republican candidates in either of the primary elections.

49. The Eleventh Congressional District in its present configuration includes parts of eight counties (DeKalb, Henry, Baldwin, Wilkes, Twiggs, Richmond, Effingham and Chatham), and all of 14 other counties. The municipalities of Augusta, Savannah, Milledgeville, Avondale Estates and Washington are divided.

50. Based upon the 1990 Decennial Census, Georgia's Second Congressional District has a black voting age population of 52.23%. A black candidate prevailed in the

1992 General Congressional election in the Second District, receiving over 63% of the vote.

51. In the July 21, 1992, general Democratic primary election for the Second Congressional District, there were six candidates. Four of those candidates, including Sanford Bishop, are black; the other two candidates, including the then-incumbent Charles Hatcher are white. Hatcher, who received 39.8% of the vote, and Bishop, who received 21.1% of the vote, were the two top vote-getters in the general Democratic primary election.

52. Because no candidate received a majority of the votes cast in the 1992 general Democratic primary election for the Second Congressional District, the two top vote-getters, Hatcher and Bishop, competed in an August 11, 1992, primary runoff election. Bishop became the Democratic nominee, winning 53.1% of the vote compared to 46.9% of the vote for Hatcher.

53. Democratic candidate Sanford Bishop won the November 3, 1992, general election for the Second Congressional District with 63.7% of the vote. Republican candidate Jim Dudley received 36.3% of the vote.

54. In the 1992 general primary election for the Second Congressional District, 102,722 votes were cast in the Democratic primary and 3,397 votes were cast in the Republican primary. In the 1992 primary runoff election for the Second Congressional District, 78,731 votes were cast in the Democratic run-off and 1,729 votes were cast in the Republican run-off. In the 1992 general election for the Second Congressional District, 95,789 votes were cast for the Democratic candidate and 54,593 votes were cast for the Republican candidate. More than 16 times as

many votes were cast for the Republican candidate in the general election than were cast for the Republican candidates in either of the primary elections.

55. Based upon the 1990 Decennial Census, Georgia's Fifth Congressional District has a black voting age population of 57.47%. A black Democratic candidate John Lewis was elected and prevailed in the 1992 General Congressional election in the Fifth District, receiving over 72% of the vote.

56. In the 1990 Congressional elections, one Republican was elected to Congress in the State of Georgia. In the 1992 Congressional elections, four Republicans were elected to Congress in the State of Georgia.

57. Georgia's First Congressional District ["First District"] encompasses 10,470.6 square miles. Georgia's Second Congressional District ["Second District"] encompasses 10,134 square miles. Georgia's Third Congressional District ["Third District"] encompasses 3,828.9 square miles. Georgia's Fourth Congressional District ["Fourth District"] encompasses 443.2 square miles. Georgia's Fifth Congressional District ["Fifth District"] encompasses 405.8 square miles. Georgia's Sixth Congressional District ["Sixth District"] encompasses 585.9 square miles. Georgia's Seventh Congressional District ["Seventh District"] encompasses 3,703 square miles. 1990 Census, Table 1, General Characteristics of Persons, at p. 1. Abrams Exhibit 1. Georgia's Eighth Congressional District ["Eighth District"] encompasses 10,644.2 square miles. 1990 Census, Table 1, at p. 2. Abrams Exhibit 1.

[add 9th & 10th] Georgia's Eleventh Congressional District ["Eleventh District"] encompasses 6,784.2 square miles. 1990 Census, Table 1, at p. 2. Abrams Exhibit 1.

58. The United States Department of Justice has objected under Section 5 of the Voting Rights Act to proposed election changes in numerous instances between 1965 and March 31, 1994, finding that Georgia and certain local jurisdictions within Georgia had not carried their burden of proving that the proposed change had neither a discriminatory purpose nor a discriminatory effect. At least 29 of the objections in Georgia or its political subdivisions have involved districting plans. An authentic copy of a Department of Justice list of those objections is Exhibit U.S. 56. A number of those objections were subsequently withdrawn in whole or in part, as indicated in the exhibit.

59. Majority black districts in the 1992 redistricting plan for the Georgia Senate range from 79.74 percent black population to 56.79 percent black population. Abrams 23.

60. Majority black districts in the 1992 redistricting plan for the Georgia House of Representatives range from 91.55 percent black population to 52.46 percent black population. Abrams 24.

61. The members of the Georgia House of Representatives are elected from 180 single-member districts. Of those districts 42 have a majority black total population and 138 have a majority white total population. Thirty of the 42 (71.4%) majority-black districts are represented by black members and 12 of the 42 (28.6%) are represented

by white members. Of the 138 majority-white House districts, one (0.7%) is represented by a black member. Exhibits U.S. 57, Abrams 24.

62. Thirty of the thirty-one (96.8%) black members of the House are elected from majority-black districts. Exhibits U.S. 57, Abrams 24.

63. The members of the Georgia Senate are elected from 56 single-member districts. Of those districts 13 have a majority black total population and 43 have a majority white total population. Nine of the thirteen (69.2%) majority-black districts are represented by black members and four of the 13 (30.8%) are represented by white members. Of the 43 majority-white Senate districts, none are represented by a black member. Exhibits U.S. 57, Abrams 23.

64. One hundred percent of the black members of the Georgia Senate are elected from majority-black districts. Exhibits U.S. 57, Abrams 23.

65. The current Sixth Congressional District contains no whole counties and parts of five different counties.

66. The City of Marietta is split between two majority-white congressional districts, and Gwinnett County is split between three majority-white congressional districts.

67. Plaintiffs filed their complaint in this action on January 13, 1994. Service was executed as to defendant Murphy on January 14, 1994 and as to defendant Zell Miller on January 18, 1994.

68. Plaintiffs filed a motion seeking a temporary restraining order and preliminary injunction on March 18, 1994.

69. For both the Georgia State Senate and the Georgia State House of Representatives, the 1994 Session of the Georgia General Assembly began on January 10, 1994, and ended on March 16, 1994. Pursuant to Georgia law, the General Assembly is not scheduled to go back into session until the second Monday in January, 1995.

70. Georgia's congressional primary elections are scheduled to be held on July 19, 1994, with any necessary runoff elections on August 9, 1994. The candidate qualifying period for the primary elections is scheduled to be held April 25 through 29. The Georgia congressional general elections are scheduled to be held on November 8, with any necessary runoff elections on November 29, 1994. For independent candidates running in the November general elections, the qualifying period is from June 27, 1994, through July 1, 1994.

71. The Eleventh Congressional District comes approximately 58 miles short of traversing the state of Georgia, by one east-west measure.

72. The district encompasses coastal areas, flatlands, and portions of the Piedmont.

73. Eight counties in the Eleventh Congressional District, Hancock, Washington, Green, Wilkinson, Glascock, Taliaferro, Warren and Jefferson contain, according to the 1990 Decennial Census, 77,799 people, less than 13.5% of the population of the Eleventh Congressional District.

B. No Fact Dispute, But Materiality Dispute

74. The configuration of the Eleventh Congressional District has been the subject of commentary by the press, both in Georgia and nationally. An editorial in *The Atlanta Journal* describes the district as "grotesque." *The Wall Street Journal* editorial has described it as "bizarrely shaped." *The Augusta Chronicle* has described it as a "crazy-quilt." Along with Congressional districts in North Carolina and Louisiana, it was featured in the July 12, 1993 issue of *Time* magazine; and in the lead story in the February 14, 1994 edition of the *New York Times*. See Plaintiffs' Exhibits 19-23.

75. In 1992, the Department of Justice was part of the Administration of President George H.W. Bush, a Republican.

* * *

135. In Georgia, white households have a per capita income of $15,832, black households have a per capita income of $7,997, or 50.5 percent of the per capita income of whites. 1990 Census, Table 17, Selected Characteristics of Persons by Race and Hispanic Origin, at p. 49. Abrams Exhibit 1.

136. In Georgia, white households have a mean income of $41,043, black households have a mean income of $23,752, or 57.9 percent of the mean income of whites. 1990 Census, Table 17, at p. 49. Abrams Exhibit 1.

137. In Georgia, of 1,757,768 white households, 90,861 (5.2%) have per capita income less than $5,000; of 573,290 black households, 94,391 (16.5%) have per capita

income less than $5,000. 1990 Census, Table 17, at p. 49. Abrams Exhibit 1.

138. In Georgia, of 1,757,768 white households, 84,453 (4.8%) have per capita income of $100,000 or more; of 573,290 black households, 4,228 (0.7%) have per capita income of $100,000 or more. 1990 Census, Table 17, at p. 49. Abrams Exhibit 1.

139. In Georgia, of 2,997, 958 white persons 25 years and over, 74.9 percent have high school diplomas or higher education, and 21.8 percent have bachelor's degree or higher education; of 954,209 black persons 25 years and over, 58.6 percent have high school diplomas or higher education and 11.0 have bachelor's or higher education. 1990 Census, Table 17, at p. 49. Abrams Exhibit 1.

140. In Georgia, of 2,479,480 white persons 16 years and over in the labor force, 98,944 (4.0%) are unemployed; of 802,174 black persons 16 years and over in the labor force, 85,049 (10.6%) are unemployed. 1990 Census, Table 17, at p. 49. Abrams Exhibit 1.

141. In Georgia, of 1,279,452 white families, 79,248 (6.2%) have income below poverty level; of 418,583 black families, 114,519 (27.4%) have income below poverty level. 1990 Census, Table 17, at p. 50. Abrams Exhibit 1.

142. In Georgia, of 4,496,697 white persons, 394,561 (8.8%) have income below poverty level; of 1,678,436 black persons, 507,992 (30.3%) have income below poverty level. 1990 Census, Table 17, at p. 50. Abrams Exhibit 1.

143. In Georgia, of 313,042 white children under age five, 34,251 (10.9%) have income below poverty level; of

162,216 black children under age five, 70,953 (43.7%) have income below poverty level. 1990 Census, Table 17, at p. 50. Abrams Exhibit 1.

144. In Georgia, of 183,179 white persons 75 and over, 38,947 (21.3%) have income below poverty level; of 51,383 black persons 75 and over, 23,605 (45.9%) have income below poverty level. 1990 Census, Table 17, at p. 50. Abrams Exhibit 1.

145. In Georgia, of 1,279,452 white families, 139,156 (10.9%) are female-headed households with no husband present; of 418,583 black families, 180,908 (43.2%) are female-headed households with no husband present. 1990 Census, Table 17, at p. 50. Abrams Exhibit 1.

146. In the Eleventh District, white households have a per capita income of $13,790, black households have a per capita income of $8,578 or 62.2 percent of the per capita income of whites. 1990 Census, Table 17, Selected Characteristics of Persons by Race and Hispanic Origin, at p. 59. Abrams Exhibit 1.

147. In the Eleventh District, mean income for white households is $34,577; mean income for black households is $26,373. 1990 Census, Table 17, at p. 59. Abrams Exhibit 1.

148. In the Eleventh District, of 79,462 white households, 4,666 (5.9%) have per capita income less than $5,000; of 120,271 black households, 16,845 (14.0%) have per capita income less than $5,000. 1990 Census, Table 17, at p. 59. Abrams Exhibit 1.

149. In the Eleventh District, of 79,462 white households, 1,795 (2.2%) have per capita income of $100,000 or

more; of 120,271 black households, 979 (0.8%) have per capita income of $100,000 or more. 1990 Census, Table 17, at p. 59. Abrams Exhibit 1.

150. In the Eleventh District, of 138,983 white persons 25 years and over, 71.6 percent have high school diplomas or higher education and 15.4 percent have bachelor's degrees or higher education; of 206,615 black persons 25 years and over, 62.2 percent have high school diplomas or higher education and 11.7 percent have bachelor's degrees or higher education. 1990 Census, Table 17, at p. 59. Abrams Exhibit 1.

151. In the Eleventh District, of 162,339 white persons 16 years and over in the labor force, 4,137 (2.5%) are unemployed; of 263, 059 black persons 16 years and over in the labor force, 17,982 (6.8%) are unemployed. 1990 Census, Table 17, at p. 59. Abrams Exhibit 1.

152. In the Eleventh District, of 56,404 white families, 3,776 (6.7%) have income below poverty level; of 91,041 black families, 20,543 (22.6%) have income below poverty level. 1990 Census, Table 17, at p. 60. Abrams Exhibit 1.

153. In the Eleventh District, of 12,437 white children under five, 1,460 (11.7%) live in poverty; of 34,344 black children under five, 12,098 (35.2%) live in poverty. 1990 Census, Table 17, at p. 60. Abrams Exhibit 1.

154. In the Eleventh District, of 10,383 white persons 75 and over, 2,303 (22.2%) live in poverty; of 9,869 black persons 75 and over, 4,425 (44.8%) live in poverty. 1990 Census, Table 17, at p. 60. Abrams Exhibit 1.

155. In the Eleventh District, of 56,404 white families, 6,892 (12.2%) were female-headed households with no husband present; of 91,041 black families, 37,489 (41.2%) were female-headed households with no husband present. 1990 Census, Table 17, at p. 60. Abrams Exhibit 1.

* * *

STANCE OF THE PARTIES

Defendants dispute the materiality of paragraphs 74 and 75. Newspaper editorial opinion about the Eleventh Congressional District is not probative of any issue in the case, and constitutes inadmissible hearsay and inadmissible opinion evidence. The identity and political party of the United States President in 1992 is also immaterial.

* * *

PLAINTIFFS' OBJECTIONS TO DEFENDANTS' AND INTERVENORS' STIPULATIONS . . .

* * *

B. Socio-Economic Data: (Stips 135-155). Plaintiffs object to the relevancy and materiality of the stipulations the Defendants propose on certain socio-economic aspects of persons living in the Eleventh Congressional District for the reasons this type of information was deemed "spurious" in *Hays v. Louisiana*, 839 F.Supp. 1188, 1203, W.D.La. (1993).

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

DAVIDA JOHNSON, et al.,	*	
	*	
Plaintiffs,	*	CV 194-08
	*	
vs.	*	(Filed Jun. 6, 1994)
	*	
ZELL MILLER, et al.,	*	
	*	
Defendants.	*	

ORDER

Before the Court in the above-captioned case are Plaintiffs' Motion to Compel Discovery from Intervenor-Defendant The United States of America and Motion for Expedited Decision on the Motion to Compel. The Motion for Expedited Decision is **GRANTED;** for the reasons which follow, the Motion to Compel is **GRANTED IN PART** and **DENIED IN PART.** The United States shall disclose information in a manner consistent with this Order.

I. Background

In this suit challenging the constitutionality of Georgia's Eleventh Congressional District, the Plaintiffs have sought various types of discovery information (more fully described below) from Intervenor-Defendant The United States of America through officials within the United States Department of Justice (hereinafter "DOJ"). The DOJ has objected to many of Plaintiffs' requests.

These objections are based generally on the disputed relevancy of the information sought, the privileged nature of much of the information sought, the duplicative nature of some of Plaintiffs' requests, the fact that much of the information has already been made available or will be made available to Plaintiffs when pretrial information is scheduled to be exchanged, and the vagueness or overbreadth of several of Plaintiffs' requests.

II. General Considerations

The following analysis pertains to the DOJ's general objections to Plaintiffs' interrogatories and requests for production of documents.[1]

A. Relevance

The DOJ first objects to the discovery sought because the information sought is not relevant to Plaintiffs' claims in the present lawsuit. The DOJ specifically argues that its preclearance decisions are not at issue in the present case, and indeed could not be at issue because the Department's preclearance decisions are not subject to judicial review. *See Morris v. Gressette*, 432 U.S. 491, 504-05 (1977).

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[1] The dispute over the deposition of John Dunne, former Assistant Attorney General for the Civil Rights Division of the Department of Justice, is the subject of a Motion for Protective Order in the District Court for the District of Columbia and is properly before that Court. The Motion to Compel the deposition of John Dunne will therefore not be directly addressed herein.

Relevance is a malleable concept, and it is a concept likely to play a more important role in admissibility decisions at trial than in the expedited discovery process in this case. At this point, Plaintiffs need only show that the information requested is reasonably calculated to lead to the discovery of admissible evidence. Rule 26(b)(1), Fed. R. Civ. P. Plaintiffs' Motion to Compel, however, requires a brief examination of relevance in this context.

An abbreviated statement of the central issues of the case will perhaps help focus the issues to determine whether the information now sought is likely to be relevant to those issues. First, the three-judge panel will be called upon at trial to determine whether the State of Georgia intentionally grouped its citizens into voting districts on the basis of race, or, in other words, whether the State engaged in intentional racial gerrymandering. *See Shaw v. Reno*, 508 U.S. ___, 113 S. Ct. 2816 (1993). Second, if racial gerrymandering is established, the panel must then decide whether the State has so classified its citizens in furtherance of any compelling state interest. *Id.* Finally, the panel must determine whether the State's plan is narrowly tailored to further any established compelling state interest. *Id.* Relevance will be determined against this backdrop.

i. The State's Intent

At the outset, the Court acknowledges – as it did in footnote two of the March 30, 1994 Order, granting the intervention of this Defendant – that the preclearance determinations of the DOJ are not subject to judicial review. *See Morris, supra,* at 504-05. Nevertheless, the

DOJ's positions are relevant to the State's decision to draft the current Congressional redistricting plan as it did.

That the DOJ's preclearance decisions have had a significant impact on the State's decision-making process cannot be denied. The DOJ primarily administers the Voting Rights Act. *See* 42 U.S.C. § 1973(c); *Perkins v. Matthews*, 400 U.S. 379, 391 (1971). The alternative to administrative preclearance – obtaining a declaratory judgment in the United States District Court for the District of Columbia, with the United States as the statutory defendant – also requires consideration of the DOJ's positions on a state's redistricting plan.[2]

The DOJ's refusals to preclear the State's first two congressional plans submitted may not be reviewed for their correctness; those refusals and communications regarding the preclearance process for the current plan may be probative, however, insofar as they may have provided the impetus for the drawing of the plan at issue here.

Ultimately, if the State is shown to have *intentionally* segregated its citizens on the basis of race, then an intentional racial gerrymander will be established regardless of the State's underlying motives for so doing. *See Hays v.*

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[2] In seeking intervention in this action, the DOJ noted that its own positions must be considered in either type of preclearance process, so a state seeking preclearance has a reasonable basis for concluding that it has "a compelling interest in enacting a new redistricting plan that would receive administrative preclearance from the Attorney General." Reply of United States in Intervention, at 4, n.4.

Louisiana, 839 F. Supp. 1188, 1195 (W.D. La. 1993). If such a gerrymander is shown, it may only be deemed a "lawful" classification if it has been narrowly tailored to further a compelling state interest. As with the issue of the State's intent, the DOJ's positions and the underlying factual basis for those positions are relevant to the issues of compelling state interests and narrow tailoring.

ii. Compelling State Interest

Defendants have asserted compliance with the Voting Rights Act as a compelling state interest in the present case.[3] As the primary arbiter of such compliance, *see Perkins, supra*, the DOJ's positions are relevant to this inquiry.

iii. Narrow Tailoring

Finally, Plaintiffs assert that the DOJ had a strong influence on the State's decision to include certain significant areas of the Eleventh Congressional District in the current plan. Defendants have asserted narrow tailoring

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[3] Compliance with the Voting Rights Act is certainly an important concern for lawmakers in states covered by the Act. It should be noted that compliance with a compelling state interest alone, however, cannot insulate a state's intentional racial gerrymandering. Given the additional requirement of narrow tailoring, states must search for the enigmatic range of permissibility between the *minimum* requirements of the Voting Rights Act and the *maximum* limits of the Equal Protection clause. *See Shaw, supra*, at 2831 (" . . . in the context of a Fourteenth Amendment challenge, courts must bear in mind the difference between what the law permits and what it requires").

in their defense of this action. The DOJ's positions on the structure of the submitted plans are clearly relevant to the question of whether the current congressional plan is narrowly tailored.

B. Deliberative Process Privilege

Although the DOJ's positions are relevant in many respects to the issues to be determined at trial, relevance alone does not settle the present discovery dispute. The DOJ has asserted the "deliberative process" privilege to shield the disclosure of certain information relating to its internal decision making.

The deliberative process privilege protects disclosure of communications, even though relevant, which are pre-decisional, non-factual, and non-public communications occurring within a federal agency. *See U.S. v. Irvin*, 127 F.R.D. 169, 172 (C.D. Cal. 1989); *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975) (discussing the privilege in the context of the nearly identical statutory exemption from disclosure under the Freedom of Information Act). Protecting the internal decision making processes of government agencies from public disclosure is meant to encourage the frank discussion of legal or policy matters *within* a governmental agency.

Some of the requested information (enumerated in section III below) falls within the deliberative process privilege and will be shielded from disclosure. The Court notes that much of the information falling within the scope of this privilege is available from other sources or

relates to subjects that are not subject to direct judicial review.

The Court also notes that the deliberative process privilege protects the collective thought process of the Department, but it does not protect the underlying *factual information* on which the DOJ based its deliberations or decisions unless that factual information cannot be separated from any protected information without disclosing the latter. *See EPA v. Mink*, 410 U.S. 73, 89 (1973).

There is also a diminished interest (if not a waiver of the privilege altogether) in shielding information reflecting the Department's deliberative processes once that information is communicated to individuals or entities outside the Department of Justice. The privilege will not extend to any individual or entity outside the Executive Branch or the Department of Justice. Factual information and any information which has been communicated to (or from) individuals or entities outside the DOJ must therefore be disclosed as Plaintiffs have requested.

If *in camera* inspection is necessary for determinations of the separability of factual and privileged information, requests can be made promptly to the undersigned district court judge.

C. Informer's Privilege

This case does not involve the typical criminal or investigative setting in which protecting the confidentiality of an informer is an urgent matter of public policy. To the extent that an informer's privilege exists at all in the present context, I find that the Plaintiffs' need to

prepare their case outweighs the DOJ's need to protect its information sources outside the Department regarding Georgia's Congressional redistricting. *See Han v. Food and Nutrition Service of the U.S. Dep't of Agriculture*, 580 F. Supp. 1564 (D.C.N.J. 1984). The informer's privilege will not serve to protect any of the information at issue in the present dispute.

If the DOJ has an *extraordinary* and compelling need in the case of a particular informer to keep the disclosed information from the purview of the general public, the Department can request an order of confidentiality as to that informer.

III. Specific Discovery Requests

A. Interrogatories

Bearing in mind the general considerations discussed above, I now turn to each of the DOJ's objections to Plaintiffs' interrogatories.

1) Plaintiffs' Interrogatory number 1 requests the DOJ to state each reason not already provided in its letter of January 21, 1992, for its refusal to grant preclearance for Georgia's first submitted Congressional redistricting plan.

The DOJ's answer to Plaintiffs' first interrogatory states that its reasons for denying preclearance for the State's first plan have been stated in the Department's disclosed letter of January 21, 1992. To the extent that additional reasons exist, the Department shall state all such reasons communicated to any individual or entity outside the DOJ. As discussed above, the Department's

communicated reasons may have had a bearing on the State's intent in drafting the current plan. The deliberative process privilege only protects pre-decisional *communications* occurring within federal agencies; a requested listing of the Department's *reasons* would not seem to fall within the privilege.

2) Plaintiffs' interrogatory number 2 is identical to the first except that it relates to the State's second submitted Congressional Plan. The same result applies for this second interrogatory.

3) Plaintiffs' interrogatory number 3 requests the DOJ to state every reason for its objection to the failure of Georgia's second plan to include certain specified populations of black voters in the Eleventh and Second Congressional Districts. Again, the same result applies.

4) Plaintiffs' interrogatory number 4 requests the DOJ to state whether it relied upon any socio-economic data in evaluating any of the State's 1991-1992 Congressional redistricting submissions, to identify the data so relied upon, to identify how such data was utilized, and to identify any communications with the State of Georgia concerning such data.

With the exception of the inquiry as to how such data was utilized, the information requested in Plaintiffs' interrogatory number 4 is the type of factual information that is not protected by the deliberative process privilege. The DOJ shall disclose all such data to the extent that it has not already been provided.

7) Plaintiffs' interrogatory number 7 requests the DOJ to identify all communications which DOJ personnel

had with individuals inside or outside the DOJ concerning Georgia redistricting in 1991 and 1992. The DOJ shall identify all communications with individuals or entities *outside* the Department as Plaintiffs have requested. The DOJ need not disclose any pre-decisional, non-factual, non-public, official communications occurring within the Department.

20) Plaintiffs' interrogatory number 20 asks: "do you contend that any congressional redistricting plans submitted to the DOJ for preclearance in 1991-92 reflected purposeful discrimination in the part of the State of Georgia?"

The DOJ appears to have answered this interrogatory in large part by stating that the current plan does not reflect purposeful discrimination and by stating that the State failed to meet its burden of proving the absence of racially discriminatory purpose in the first two plans. To the extent that the DOJ has formed an affirmative judgment on the State's intent in the first two plans, and to the extent that such a judgment was disclosed to any individual or entity outside the Department, the DOJ shall so respond to the remainder of Plaintiffs' interrogatory number 20.

B. Requests for Production of Documents

1) Plaintiffs' requests for production numbers 1 and 2 seek all correspondence and invoices between the DOJ and any expert "identified as a possible witness by Defendants in this case relating to other cases wherein such individuals were retained to testify on behalf of the

United States and/or other Plaintiffs where the Voting Rights Act was sought to be enforced to protect Black voting strength."

The DOJ objects to these requests on the grounds that the information requested is not relevant to the instant litigation and the identification and compilation of the requested documents would be unduly burdensome on the United States. The positions taken by the Defendants' experts in other Voting Rights Act litigation, however, are clearly relevant to their experts' testimony on the Voting Rights Act in the present case.

Given the vast resources of the DOJ, and given the intervention of the United States as a defendant in this action, it is not overly burdensome to require the DOJ to produce the requested information. The scope of the requested information shall be limited, however, to litigation occurring after the 1990 decennial census.

2) Plaintiffs' request for production number 3 seeks all correspondence by and between attorneys for the DOJ and any third party referencing the Congressional redistricting of Georgia necessitated by the 1990 census. With the exception of any work product of attorneys within the DOJ, the Department shall produce the information as Plaintiffs have requested.

3) Plaintiffs' request for production number 4 seeks all written communications from members of the Executive or Legislative Branches of the federal government to any DOJ employee regarding the Congressional redistricting plan in Georgia and the desire for DOJ intervention in the instant litigation.

The DOJ shall disclose all such communications from members of the Legislative Branch. The DOJ need not, however, disclose any non-public, pre-decisional, and non-factual official communications from individuals within the Executive Branch.

4) Plaintiffs' request for production number 5 seeks all documents or other data in the possession of the Intervenor U.S.A. at the time of the preclearance process for the Georgia Congressional Districting Plan that were relied upon in assessing whether white Georgians engaged in racial bloc voting.

To the extent that this request seeks pre-decisional, non-factual, non-public official communications within the Department of Justice concerning racial bloc voting, the DOJ shall not be required to disclose this information. To the extent that the request seeks information falling outside this description, such information shall be disclosed.

5) Plaintiffs' request for production number 6 seeks all documents in the possession of the DOJ that it believes to be probative of its contention that the Eleventh Congressional District is (a) geographically compact, (b) geographically contiguous, and (c) incorporates a black population that has a common community of interest and is politically cohesive.

The DOJ objects to this request on the ground that the request is vague. The DOJ also enumerates a number of documents which it believes to be responsive to Plaintiffs' request and to which the Plaintiffs already have access.

If the enumerated documents are the only documents intended to be used by the DOJ at trial, then its response was sufficiently responsive to Plaintiffs' broad request. If the Department possesses additional probative information which it intends to utilize in proving the described elements, then such information shall be disclosed to Plaintiffs.

6) Plaintiffs' request for production number 7 seeks all documents relating to the creation or perpetuation of the so called "65% Rule" within the DOJ. Since the DOJ denies, presumably in good faith, that such a rule exists within the United States Department of Justice, the Court is not able to compel the production of documents relating to such a rule.

7) Plaintiffs' request for production number 8 seeks all documents referencing a desire by any governmental official or third party to apply the "65% Rule" to Congressional redistricting in Georgia following the 1990 census.

The DOJ has answered this request by stating that it has provided Plaintiffs all of the presently requested information of which it is aware.

8) Plaintiffs' request for production number 9 seeks all documents relating to any advocacy within the DOJ for proportional minority representation or maximization of minority representation.

The DOJ denies that a policy of proportional minority representation or maximization exists within the Department, and the DOJ objects to this request on the grounds

that it is vague, overbroad, and burdensome. Any documents regarding advocacy – or attempts to influence individuals or entities *outside* the Department – of proportional minority representation or maximization (if such documents exist) shall be produced as Plaintiffs have requested, but the scope of this request shall be limited to the years following the 1990 decennial census.

9) Plaintiffs' request for production number 10 seeks all documents which Defendants intend to use as charts, graphs, or otherwise offer into evidence or display at trial in enlarged form to the Court.

The DOJ has sufficiently responded to this request, and Plaintiffs will receive the requested information according to the established Joint Discovery Plan.

10) Plaintiffs' requests for production numbers 11 and 12 seek "all documents you contend support any defense asserted in this action" and "all documents you believe may be probative of any claim or defense asserted in this action."

The DOJ objects to these requests in part on the grounds that they are vague, overbroad, and burdensome. The Court agrees with the Department as to these requests.

11) Plaintiffs' request for production number 14 seeks all documents, including correspondence and pleadings, in or relating to the case of *Brooks v. State Board of Elections*, CV288-146 (S.D. Ga.).

The pleadings in the *Brooks* action are readily available from sources other than the United States Department of Justice, and Plaintiffs may obtain them from

those sources if so desired. Correspondence regarding the *Brooks* case between attorneys for the Department of Justice and individuals outside the Department may bear upon the State's intent in drafting the present Congressional redistricting plan and shall be disclosed.

12) Plaintiffs' request for production number 15 seeks all documents, including correspondence and pleadings, in or relating to the case of *Busbee v. Smith*, Civil Action No. 82-0665 (D.D.C). The same result applies to the *Busbee* case as to the *Brooks* case, discussed above.

The parties shall promptly proceed with discovery as ordered herein. Requests for *in camera* inspection, if and when necessary, shall be made as discussed above

ORDER ENTERED at Augusta, Georgia, this 6th day of June, 1994.

/s/ Dudley H. Bowen, Jr.
UNITED STATES
DISTRICT JUDGE

SUPREME COURT OF THE UNITED STATES

No. 94-631

Zell Miller, et al.

Appellants

v.

Davida Johnson, et al.

(Filed Jan. 17, 1995)

APPEAL from the United States District Court for the Southern District of Georgia. The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted. This case is consolidated with 94-797, *Lucious Abrams, Jr., et al. v. Davida Johnson, et al.* and 94-929, *United States v. David Johnson, et al.* and a total of one hour is allotted for oral argument.

January 6, 1995

SUPREME COURT OF THE UNITED STATES

No. 94-797

Lucious Abrams, Jr., et al.

Appellants

v.

Davida Johnson, et al.

(Filed Jan. 17, 1995)

APPEAL from the United States District Court for the Southern District of Georgia. The statement of jurisdiction in this case having been submitted and considered

by the Court, in this case probable jurisdiction is noted. This case is consolidated with 94-631, *Zell Miller, et al. v. Davida Johnson, et al.* and 94-929, *United States v. Davida Johnson, et al.* and a total of one hour is allotted for oral argument.

January 6, 1995

SUPREME COURT OF THE UNITED STATES

No. 94-929

United States,

Appellant

v.

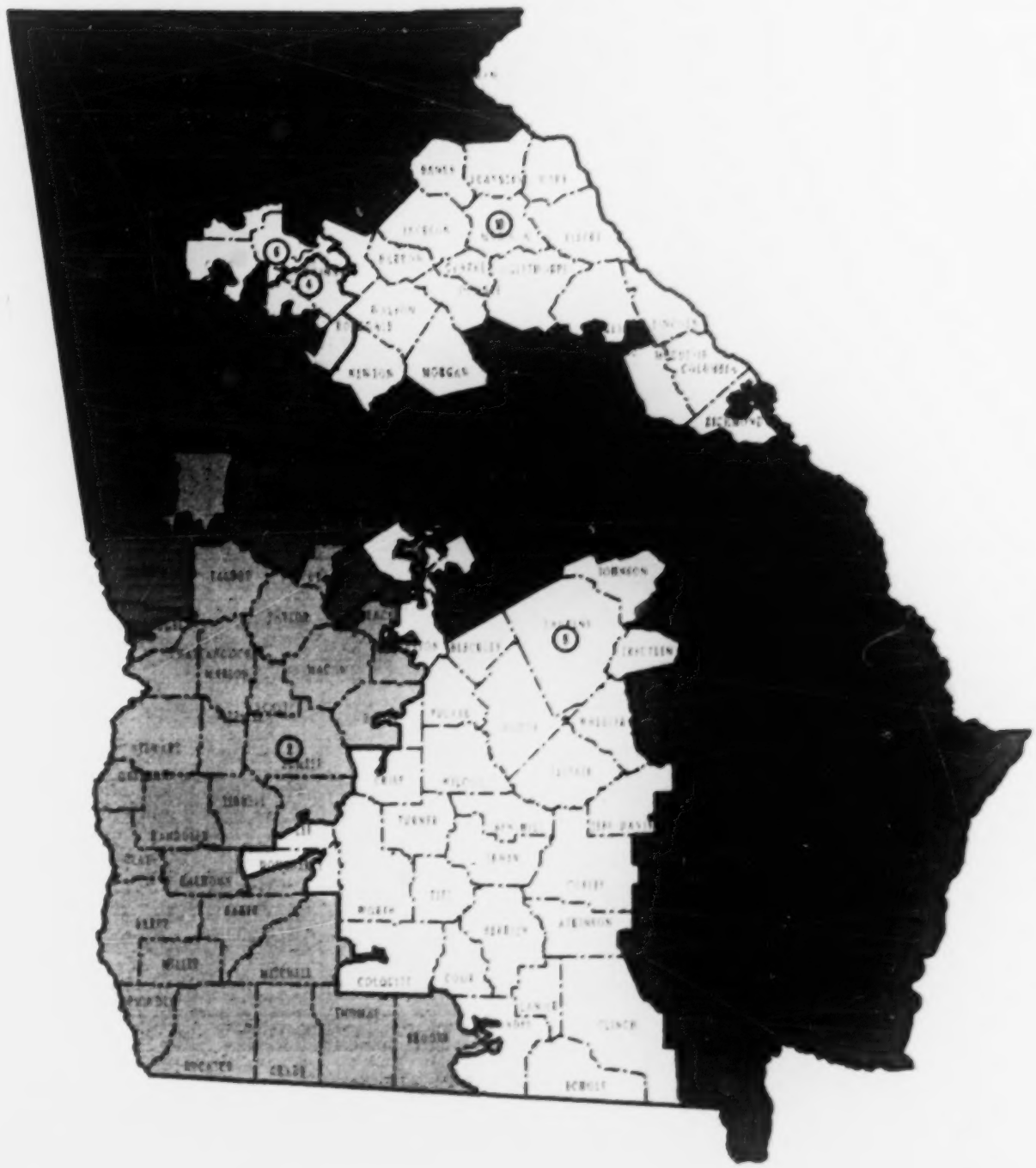
Davida Johnson, et al.

(Filed Jan. 17, 1995)

APPEAL from the United States District Court for the Southern District of Georgia. The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted. This case is consolidated with 94-631, *Zell Miller, et al. v. Davida Johnson, et al.* and 94-929, *Lucious Abrams, Jr. et al. v. Davida Johnson, et al.* and a total of one hour is allotted for oral argument.

January 6, 1995

Joint Exhibit 1



Client : CONGRESS
Plan : C1992
Type : Congressional

- County Boundaries
- Precinct Boundaries
- Railroads
- Hydrography
- Incorporated Places

Reapportionment Services Office
Suite 407, Legislative Office Bldg

Georgia General Assembly

Population Summary Report
(NOTE: VAP – Voting Age Population)

District Number	Total Pop % Deviation	Black Pop % of Total	VAP % of Total	Black VAP % of VAP
1	589546	133616	429079	87200
	0.10	22.66	72.78	20.32
2	591699	335059	415777	217558
	0.47	56.63	70.27	52.33
3	591328	105263	429343	69800
	0.41	17.80	72.61	16.26
4	588293	67968	448179	48225
	-0.11	11.55	76.18	10.76
5	586485	365206	440910	253413
	-0.41	62.27	75.18	57.47
6	587118	35366	438847	25567
	-0.31	6.02	74.75	5.83
7	588071	75813	431939	50533
	-0.15	12.89	73.45	11.70
8	591615	124257	427447	78521
	0.46	21.00	72.25	18.37
9	586222	21516	436725	15161
	-0.46	3.67	74.50	3.47
10	591644	106916	439254	72631
	0.46	18.07	74.24	16.54
11	586195	375585	413413	249533
	-0.46	64.07	70.52	60.36
Totals	6478216	1746565	4750913	1168142

Number of Districts	:	11
Members Per District	:	1
Ideal District Size	:	588929
Average Deviation (%)	:	0.35
Deviation Range (%)	:	-0.46 to 0.47
Overall Deviation (%)	:	0.93

(DATA SOURCE: 1990 US Census
PL94-171 Population Counts)

Joint Exhibit 2

Client : STATE
Plan : SB705CONF1
Type : Congressional

Reapportionment Services Office
Suite 407, Legislative Office Bldg

Georgia General Assembly

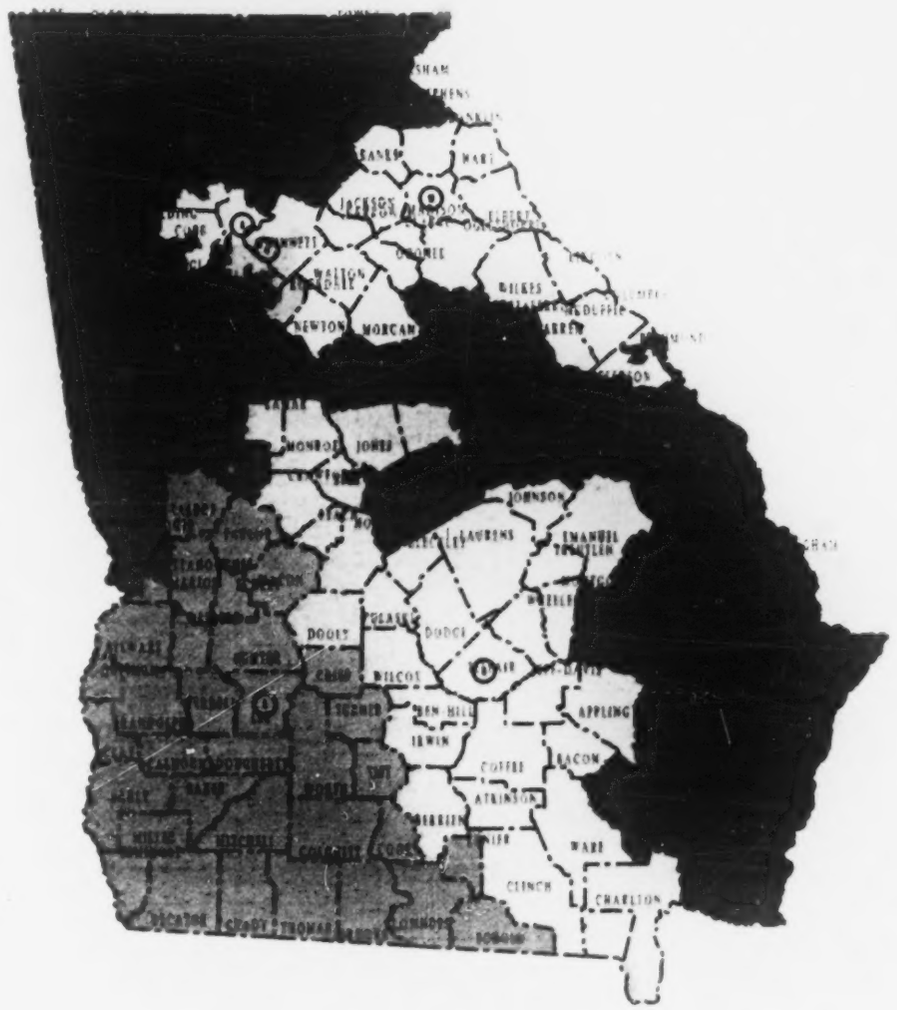
Population Summary Report
(NOTE: VAP – Voting Age Population)

District Number	Total Pop % Deviation	Black Pop % of Total	VAP % of Total	Black VAP % of VAP
1	594161 0.89	178895 30.11	430559 72.47	117944 27.39
2	583230 -0.97	286629 49.15	409358 70.19	184258 45.01
3	593692 0.81	110703 18.65	430538 72.52	73441 17.06
4	588293 -0.11	67968 11.55	448179 76.18	48225 10.76
5	586485 -0.41	365206 62.27	440910 75.18	253413 57.47
6	587116 -0.31	35366 6.02	438845 74.75	25567 5.83
7	588073 -0.15	75813 12.89	431941 73.45	50533 11.70
8	590739 0.31	132546 22.44	427279 72.33	84338 19.74
9	586222 -0.46	21516 3.67	436725 74.50	15161 3.47
10	591987 0.52	108029 18.25	438898 74.14	73152 16.67
11	588218 -0.12	363894 61.86	417681 71.01	242110 57.97
Totals	6478216	1746565	4750913	1168142

Number of Districts	:	11
Members Per District	:	1
Ideal District Size	:	588929
Average Deviation (%)	:	0.46
Deviation Range (%)	:	-0.97 to 0.89
Overall Deviation (%)	:	1.86

(DATA SOURCE: 1990 US Census
PL94-171 Population Counts)

Joint Exhibit 3



Client : STATE
Plan : SB2EXASPASS
Type : Congressional

Reapportionment Services Office
Suite 407, Legislative Office Bldg

Georgia General Assembly

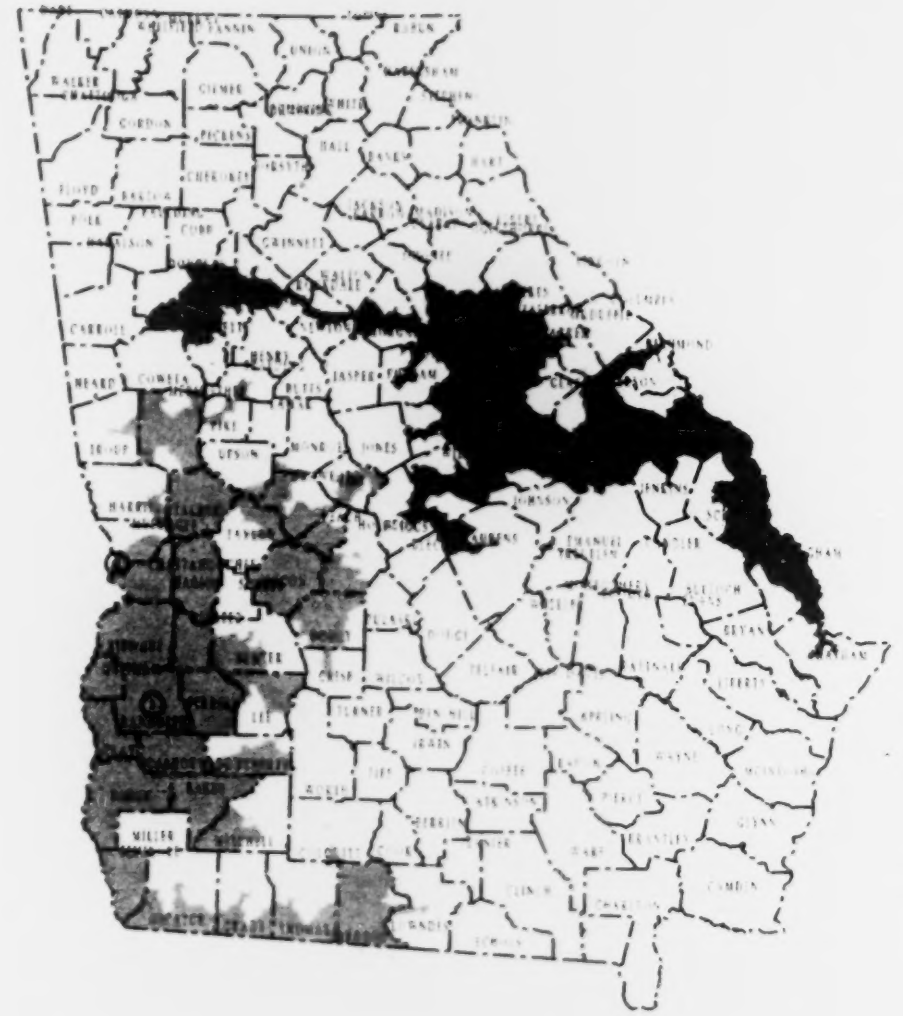
Population Summary Report
(NOTE: VAP – Voting Age Population)

District Number	Total Pop %Deviation	Black Pop % of Total	VAP % of Total	Black VAP % of VAP
1	588541 -0.07	179809 30.55	426558 72.48	118631 27.81
2	587346 -0.27	231843 39.47	415158 70.68	146861 35.37
3	594388 0.93	151788 25.54	429219 72.21	100115 23.32
4	583859 -0.86	57431 9.84	448236 76.77	41354 9.23
5	591871 0.50	367747 62.13	440208 74.38	254608 57.84
6	589283 0.06	36305 6.16	442764 75.14	26366 5.95
7	593007 0.69	80689 13.61	434613 73.29	53831 12.39
8	593485 0.77	160797 27.09	429481 72.37	105418 24.55
9	589420 0.08	21520 3.65	439083 74.49	15164 3.45
10	583663 -0.89	104932 17.98	430351 73.73	70720 16.43
11	583353 -0.95	353704 60.63	415242 71.18	235074 56.61
Totals	6478216	1746565	4750913	1168142

Number of Districts	:	11
Members Per District	:	1
Ideal District Size	:	588929
Average Deviation (%)	:	0.55
Deviation Range (%)	:	-0.95 to 0.93
Overall Deviation (%)	:	1.87

(DATA SOURCE: 1990 US Census
PL94-171 Population Counts)

Joint Exhibit 4



Client : MCKINNEY
Plan : BMCCONGRESS
Type : Congressional

Reapportionment Services Office
Suite 407, Legislative Office Bldg

Georgia General Assembly

Population Summary Report
(NOTE: VAP – Voting Age Population)

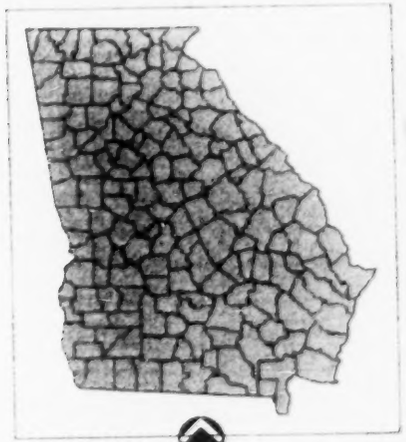
District Number	Total Pop % Deviation	Black Pop % of Total	VAP % of Total	Black VAP % of VAP
2	586184 -0.47	341605 58.28	411508 70.20	221515 53.83
5	583857 -0.86	374437 64.13	432542 74.08	258659 59.80
11	588950 0.00	381034 64.70	415220 70.50	253046 60.94
Totals	1758991	1097076	1259270	733220

Number of Districts:	:	1
Members Per District	:	1
Ideal District Size	:	588929
Average Deviation (%)	:	0.44
Deviation Range (%)	:	-0.86 to 0.00
Overall Deviation (%)	:	0.86

(DATA SOURCE: 1990 US Census
PL94-171 Population Counts)

Joint Exhibit 8

Client : REDRAW
Plan : SREDRAW2
Type : Congressional



Reapportionment Services Office
Suite 407, Legislative Office Bldg

Georgia General Assembly

Population Summary Report
(NOTE: VAP – Voting Age Population)

District Number	Total Pop % Deviation	Black Pop % of Total	VAP % of Total	Black VAP % of VAP
1	592896 0.67	141819 23.92	431321 72.75	92531 21.45
2	592257 0.57	302984 51.16	417544 70.50	196245 47.00
3	590336 0.24	116205 19.68	428736 72.63	77385 18.05
4	590170 0.21	58067 9.84	452790 76.72	41783 9.23
5	590462 0.26	372667 63.11	439129 74.37	257997 58.75
6	583113 -0.99	35502 6.09	437276 74.99	25766 5.89
7	588073 -0.15	75813 12.89	431941 73.45	50533 11.70
8	587297 -0.28	147178 25.06	423913 72.18	94030 22.18
9	589420 0.08	21520 3.65	439083 74.49	15164 3.45
10	586271 -0.45	107647 18.36	433229 73.90	72729 16.79
11	587921 -0.17	367163 62.45	415951 70.75	243979 58.66
Totals	6478216	1746565	4750913	1168142

Number of Districts	:	11
Members Per District	:	1
Ideal District Size	:	588929
Average Deviation (%)	:	0.37
Deviation Range (%)	:	-0.99 to 0.67
Overall Deviation (%)	:	1.66

(DATA SOURCE: 1990 US Census
PL94-171 Population Counts)

Joint Exhibit 9

GUIDELINES ADOPTED BY THE HOUSE COMMITTEE ON CONGRESSIONAL AND LEGISLATIVE REAPPORTIONMENT AND REDISTRICTING
1991 – 1992

I. HEARINGS AND MEETINGS

A. PUBLIC HEARINGS

1. A series of public hearings will be held throughout the state to actively seek public participation and maximize public input before and after the committee's redistricting plans have been made.

2. The committee will hold at least 12 public hearings (one meeting in each congressional district and two additional meetings) throughout the state for the purpose of receiving input and commentary from all sectors of the public.

3. Minutes of all hearings should be kept and maintained as part of the public record. Copies of the minutes should be made available in a timely manner at a reasonable cost to cover the expense of copying from the Secretary of the Senate or Clerk of the House.

B. COMMITTEE MEETINGS

1. All meetings of the committee will be open to the public and should be conducted at times and places suitable to public participation and observation.

2. All committee meetings will be announced. Notices of all meetings will be posted at the House Clerk's Office and other appropriate

places at least 24 hours in advance of any meeting. Individual notices may be transmitted to any citizen or organization requesting the same without charge prior to the meeting by the most practicable means. Persons or organizations needing this information should contact the Senate or House Information Office or the Secretary of the Senate or Clerk of the House to be placed on the notification list.

These notice requirements will not apply during any regular or special session of the General Assembly.

3. A quorum of the Reapportionment Committee shall consist of a majority of the members of the committee.

4. Minutes of all meetings should be kept and maintained as part of the public record. Copies of the minutes should be made available in a timely manner at a reasonable cost to cover the expense of copying from the Secretary of the Senate or Clerk of the House.

II. PUBLIC ACCESS TO REDISTRICTING DATA AND MATERIALS

A. The Reapportionment Committee should comply fully with all applicable laws and rules which provide public access to the committee's meetings, documents, and records. All data bases on any medium created at public expense or held by the committee or by a contractor or consultant to the committee for use in the redistricting process are included as public records.

B. Copies of any public records on any medium created for, acquired by, or used in or

held for use in the redistricting process by the committee or by a contractor or consultant to the committee should be made available in accordance with the provisions of the Open Records Act, O.C.G.A. Section 50-18-70, et seq.

C. Copies of the public records described above may be obtained at the cost of reproduction by members of the public on computer tape or disk or other electronic media if the material exists on an appropriate electronic medium.

D. Access to the population data will be made available to the public through the Census State Data Center Affiliate at the University of Georgia at the cost of reproduction. Census maps will be made available to the public through an arrangement with Georgia Blue Printing at a cost of 20 cents per square foot with a minimum order of $7.50.

A single copy of summary population data at the precinct level and a state-wide work map will be made available to any individual member of the public through the Reapportionment Services Office at no cost.

III. REDISTRICTING PLANS

A. GENERAL GUIDELINES FOR PLANS

1. A redistricting plan may be presented to the Reapportionment Committee by any individual citizen or organization. All drafts of and amendments or revisions to plans presented at any public hearing or committee meeting, including those presented by members of the legislature, should be on clearly depicted maps which follow census geographic boundaries and should

be accompanied by a statistical sheet listing the census geography included, the total population, and the minority population for each proposed district.

All plans presented at committee meetings will be made available to the public.

2. Each legislative district of the General Assembly should be drawn to achieve substantial equality of population among the various districts. The population deviation for any legislative district should not exceed plus or minus 5 percent.

Each congressional district should approach the ideal district size as nearly as is practicable. Any deviation whatsoever must be justified by its necessity to meet a permissible state policy goal.

3. A redistricting plan should not have either the purpose or the effect of diluting minority voting strength and should otherwise comply with Sections 2 and 5 of the Voting Rights Act.

4. All legislative and congressional districts shall be single-member districts.

5. Districts should be composed of contiguous geography. Areas which meet at the points of adjoining corners are not contiguous.

6. Where the above-stated criteria are met, efforts may be made to maintain the integrity of political subdivisions and the cores of existing districts and consideration may be given to avoiding contests between incumbents.

7. Local voting precinct boundary lines should serve as the basic district building block in order

to minimize voter confusion and cost of election administration. Where voting precinct boundary lines cannot be followed and also meet Guidelines 2 and 3 as stated above, district lines should follow census block geography in order to maintain the integrity of the statistical analysis.

B. PLANS PRODUCED BY LEGISLATORS

1. Committee staff will be available to all legislators requesting assistance. Census data and redistricting work maps will be available to all legislators upon request.

2. Redistricting plans and other records related to the provision of staff services to individual members of the General Assembly will not be subject to public disclosure; but this confidentiality will not apply with respect to records related to the provision of staff services to any committee or subcommittee or to any records which are or have been previously disclosed by or pursuant to the direction of an individual member of the General Assembly.

3. All drafts, amendments, or revisions should be on clearly depicted maps which follow census geographic boundaries and should be accompanied by a statistical sheet listing the census geography included, the total population, and the minority population for each district.

4. All plans submitted should either be a complete state-wide plan or fit back into the plan which they modified, so that the proposal can be evaluated in the context of a state-wide plan. All

pieces of census geography must be accounted for in some district.

C. THIRD-PARTY PLANS

1. All plans submitted to the Reapportionment Committee will be made part of the public record and made available in the same manner as other committee public records.

2. Any individual citizen or organization may present a plan to the Reapportionment Committee by presentation at a public meeting or by written submission. Any redistricting plan developed outside the legislature or any redistricting plan developed without Reapportionment Office assistance which is to be presented for consideration by the committee should:

(a) Be clearly depicted on census maps or on reapportionment work maps obtainable from the Reapportionment Office;

(b) Be accompanied by a statistical sheet listing total population and minority population and a listing of the census geography making up each proposed district;

(c) Stand as a complete plan for redistricting or, if presenting a partial plan, fit back into the committee's working plan (i.e., all pieces of geography must be accounted for in some district); and

(d) Comply with the guidelines adopted by the committee.

3. Electronic submissions of legislative and congressional redistricting plans will be accepted by the Reapportionment Committee. However, any plan submitted in a computer

readable media should comply with the guidelines for electronic submission as adopted jointly by the U.S. Justice Department and the Reapportionment Task Force of the National Conference of State Legislatures.

Joint Exhibit 10

SENATE REAPPORTIONMENT COMMITTEE

GUIDELINES FOR CONGRESSIONAL AND LEGISLATIVE

REAPPORTIONMENT AND REDISTRICTING

1991-1992

(Adopted February 28, 1991)

1. HEARINGS AND MEETINGS

A. Public Hearings

1. A series of public hearings will be held throughout the state to actively seek public participation and maximize public input before and after the committee's redistricting plans have been made.

2. The committee will hold at least 12 public hearings (one meeting in each congressional district and two additional meetings) throughout the state for the purpose of receiving input and commentary from all sectors of the public.

B. Committee Meetings

1. All meetings of the committee will be open to the public and should be conducted at times and places suitable to public participation and observation.

2. All committee meetings will be announced. Notices of all meetings will be posted at appropriate places at least 24 hours in advance of any meeting. Individual notices may be transmitted to any citizen or organization requesting the same without charge prior to the meeting by the most practicable means. Persons or organizations needing this information should contact the Senate or

House Information Office or the Secretary of the Senate or Clerk of the House offices to be placed on the notification list.

These notice requirements will not apply during any regular or special session of the General Assembly.

3. A quorum of the Reapportionment Committee shall consist of eight (8) members.

4. Minutes of all meetings should be kept and maintained as part of the public record. Copies of the minutes should be made available in a timely manner at a reasonable cost to cover the expense of copying from the Secretary of the Senate or Clerk of the House offices.

II. PUBLIC ACCESS TO REDISTRICTING DATA AND MATERIALS

A. The Reapportionment Committee should comply fully with all applicable laws which provide public access to the committee's meetings, documents, and records. All databases on any medium created at public expense or held by the committee or by a contractor or consultant to the committee for use in the redistricting process are included as public records.

B. Copies of any public records on any medium created for, acquired by, or used in or held for use in, the redistricting process by the committee or by a contractor or consultant to the committee should be made available in accordance with the provisions of the Open Records Act, O.C.G.A. §50-18-70, et seq.

C. Copies of the public records described above may be obtained by members of the public on computer tape or

disk or other electronic media if the material exists on an appropriate electronic medium.

D. Access to the population data will be made available to the public through the Census State Data Center Affiliate at the University of Georgia at the cost of reproduction. Census maps will be made available to the public through an arrangement with Georgia Blue Printing at a cost of 20 cents per square foot with a minimum order of $7.50.

Summary population data at the precinct level and a statewide work map will be made available to the public through the Reapportionment Services Office at no cost.

III. REDISTRICTING PLANS

A. GENERAL GUIDELINES FOR PLANS

1. A redistricting plan may be presented to the Reapportionment Committee by any individual citizen or organization. All drafts of and amendments or revisions to plans presented at any public hearing or committee meeting, including those presented by members of the legislature, should be on clearly depicted maps which follow census geographic boundaries and should be accompanied by a statistical sheet listing the census geography included, the total population, and the minority population for each proposed district.

All plans presented at committee meetings will be made available to the public.

2. Each legislative district of the General Assembly should be drawn to achieve substantial equality of population among the various districts. The population deviation for any legislative district should not exceed plus or minus five percent.

Each congressional district should approach the ideal district size as nearly as is practicable. Any deviation whatsoever must be justified by its necessity to meet a permissible state policy goal.

3. A redistricting plan should not have either the purpose or the effect of diluting minority voting strength and shall otherwise comply with Sections 2 and 5 of the Voting Rights Act.

4. All legislative and congressional districts should be single-member districts.

5. Districts should be composed of contiguous geography. Areas which meet at the points of adjoining corners are not contiguous.

6. Where the above-stated criteria are met, efforts may be made to maintain the integrity of political subdivisions and the cores of existing districts; and consideration may be given to avoiding contests between existing incumbents.

7. Local voting precinct boundary lines should serve as the basic district building block in order to minimize voter confusion and cost of election administration. Where voting precinct boundary lines cannot be followed and also meet Guidelines (III A.) 2 and 3 as stated above, district lines should follow census block geography in order to maintain the integrity of the statistical analysis.

B. PLANS PRODUCED BY LEGISLATORS

1. Committee staff will be available to all legislators requesting assistance. Census data and redistricting work maps will be available to all legislators upon request.

2. Redistricting plans and other records related to the provision of staff services to individual members of the General Assembly will not be subject to public disclosure. This confidentiality will not apply with respect to records related to the provision of staff services to any committee or subcommittee or to any records which are or have been previously disclosed by or pursuant to the direction of an individual member or the General Assembly.

3. All drafts, amendments, or revisions should be on clearly depicted maps which follow census geographic boundaries and should be accompanied by a statistical sheet listing the census geography included, the total population, and the minority population for each district.

4. All plans submitted should either be a complete statewide plan or fit back into the plan which they modified, so that the proposal can be evaluated in the context of a statewide plan. All pieces of census geography must be accounted for in some district.

C. THIRD-PARTY PLAN

1. All plans submitted to the Reapportionment Committee will be made part of the public record and made available in the same manner as other committee public records.

2. Any individual citizen or organization may present a plan to the Reapportionment Committee by presentation

at a public meeting or by written submission. Any redistricting plan developed outside the Legislature or any redistricting plan developed without Reapportionment Office assistance which is to be presented for consideration by the committee should:

a.) be clearly depicted on census maps or on reapportionment work maps obtainable from the Reapportionment Office;

b.) be accompanied by a statistical sheet listing total population and minority population and a listing of the census geography making up each proposed district;

c.) stand as a complete plan for redistricting or, if presenting a partial plan, fit back into the committee's working plan (i.e., all pieces of geography must be accounted for in some district); and

d.) comply with the guidelines adopted by the committee.

3. Electronic submissions of legislative and Congressional redistricting plans will be accepted by the Reapportionment Committee. However, any plan submitted in a computer readable media should comply with the guidelines for electronic submission as adopted jointly by the U.S. Justice Department and the Reapportionment Task Force of the National Conference of State Legislatures. (See attachment A.)

GEORGIA

89th Congress

Map of Congressional Districts, Counties, and Selected Cities

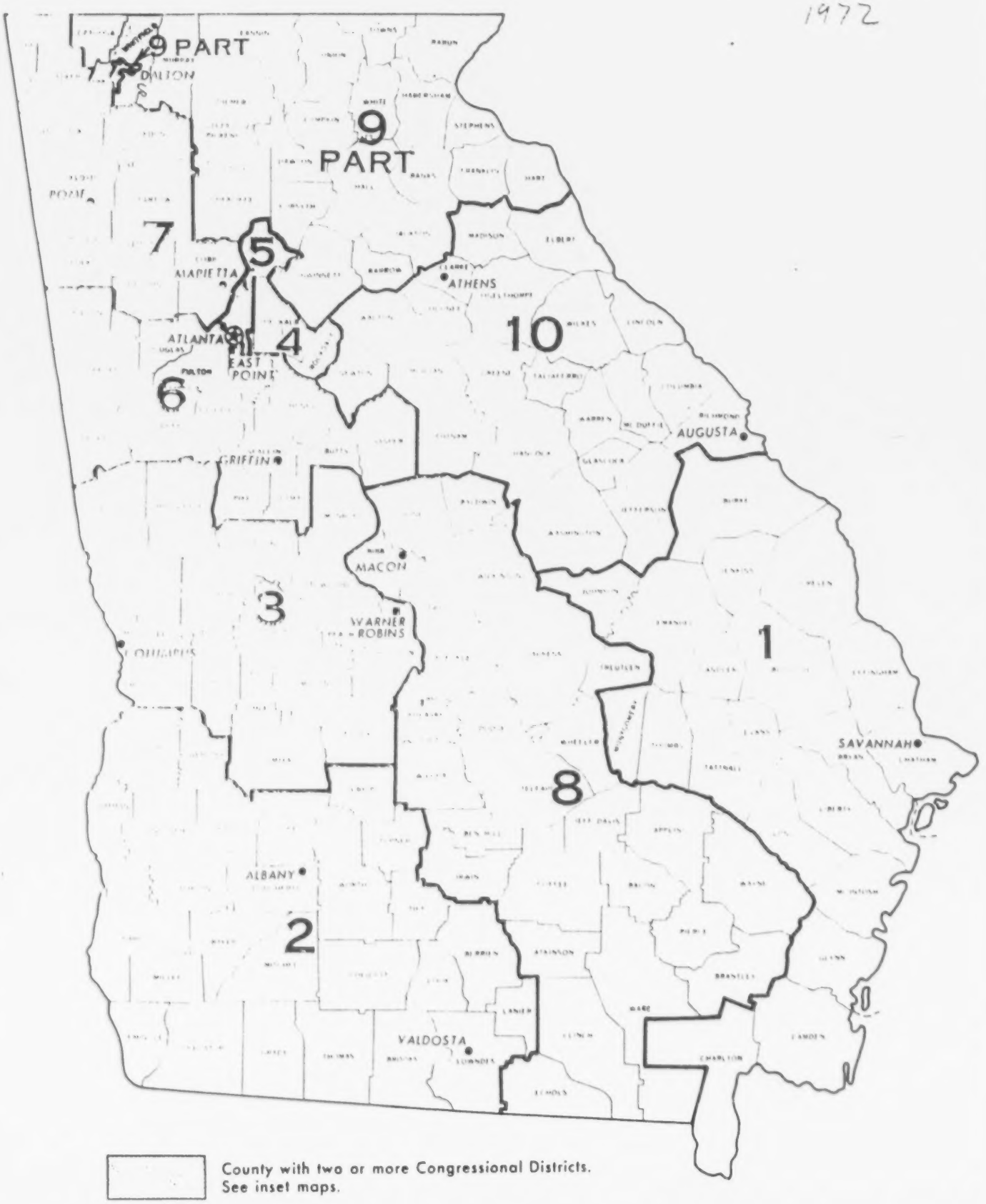
(10 Districts)

U.S. Department of Commerce
Bureau of the Census

Map of Congressional Districts, Counties, and Selected Cities

(10 Districts)

93.1 Congress
1972



County with two or more Congressional Districts. See inset maps.

U.S. DEPARTMENT OF COMMERCE
SOCIAL AND ECONOMIC STATISTICS ADMINISTRATION
BUREAU OF THE CENSUS

Districts established March 16, 1972

GEORGIA

SENATORS

Sam Nunn
Wyche Fowler, Jr.

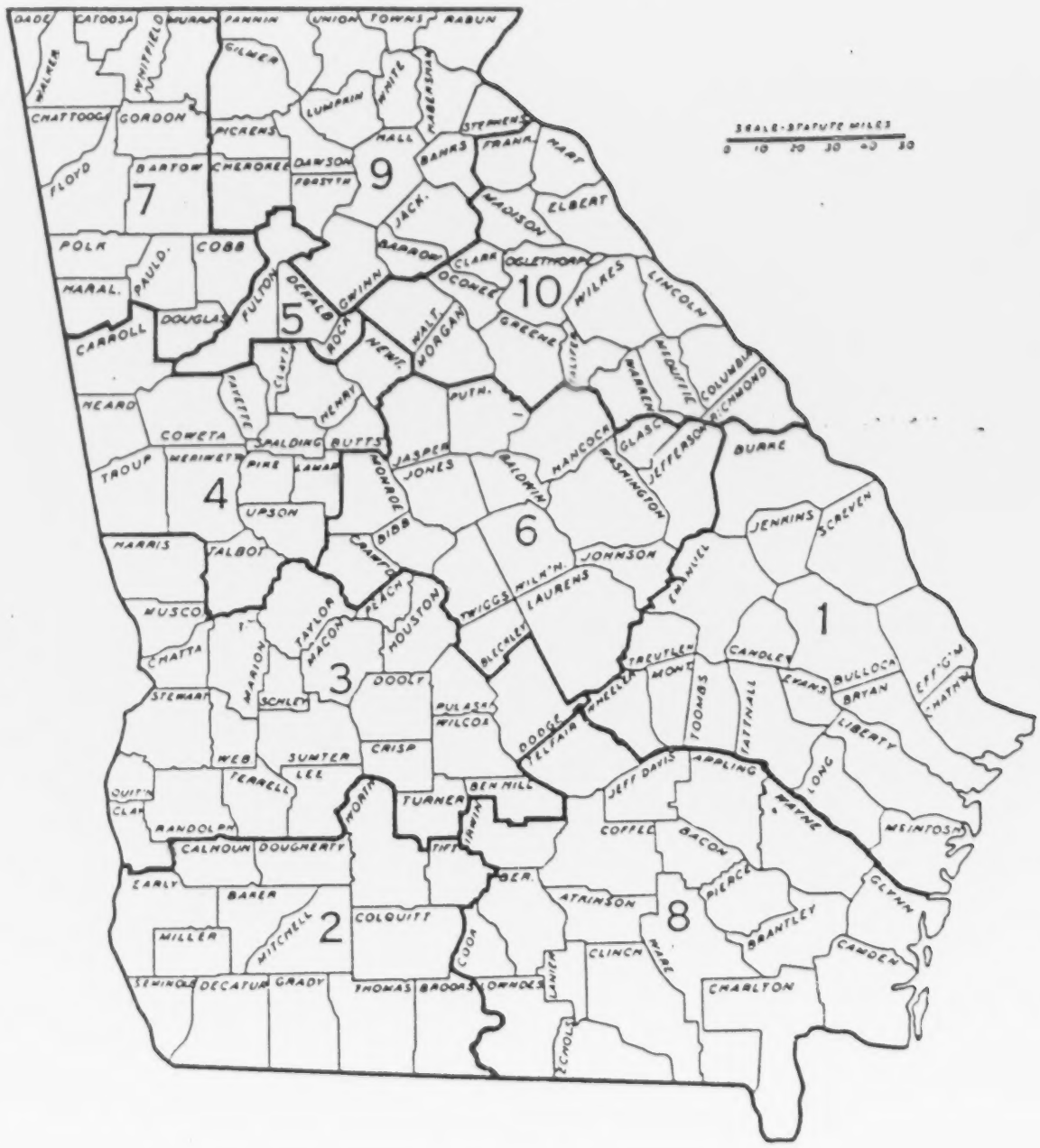
REPRESENTATIVES BY DISTRICTS

1. Lindsay Thomas
2. Charles F. Hatcher
3. Richard Ray
4. Ben Jones
5. John Lewis
6. *Newt Gingrich*
7. George (Buddy) Darden
8. J. Roy Rowland
9. Ed Jenkins
10. Doug Barnard, Jr.

76th Congress
H.R.

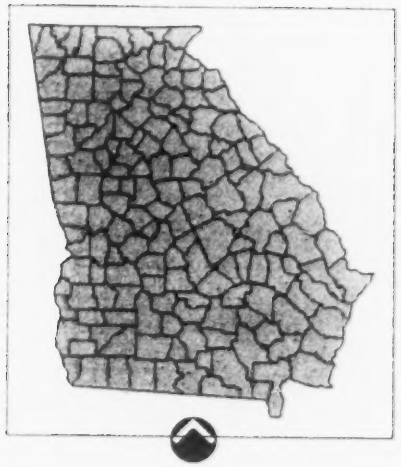
GEORGIA

(10 districts)



Defendants' Joint Exhibit 11

Client : LINDA
Plan : TEMPLATE
Type : Congressional



Reapportionment Services Office
Suite 407, Legislative Office Bldg

Georgia General Assembly

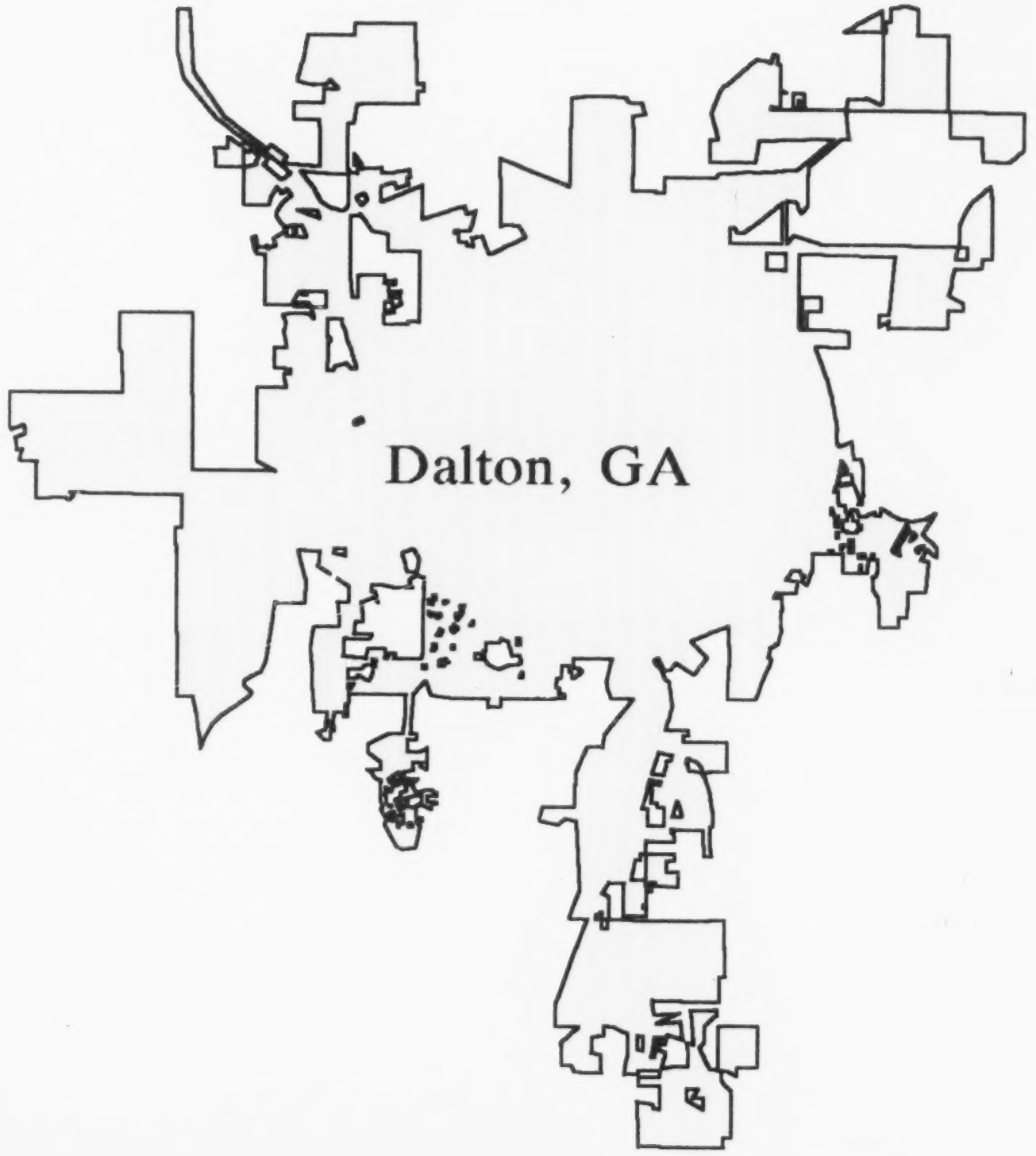
Population Summary Report
(NOTE: VAP – Voting Age Population)

District Number	Total Pop % Deviation	Black Pop % of Total	VAP % of Total	Black VAP % of VAP
4	589623 0.12	349022 59.19	421203 71.44	232203 55.13
5	584675 -0.72	365474 62.51	441678 75.54	253768 57.46
Totals	1174298	714496	862881	485971

Number of Districts	:	11
Members Per District	:	1
Ideal District Size	:	588929
Average Deviation (%)	:	0.42
Deviation Range (%)	:	-0.72 to 0.12
Overall Deviation (%)	:	0.84

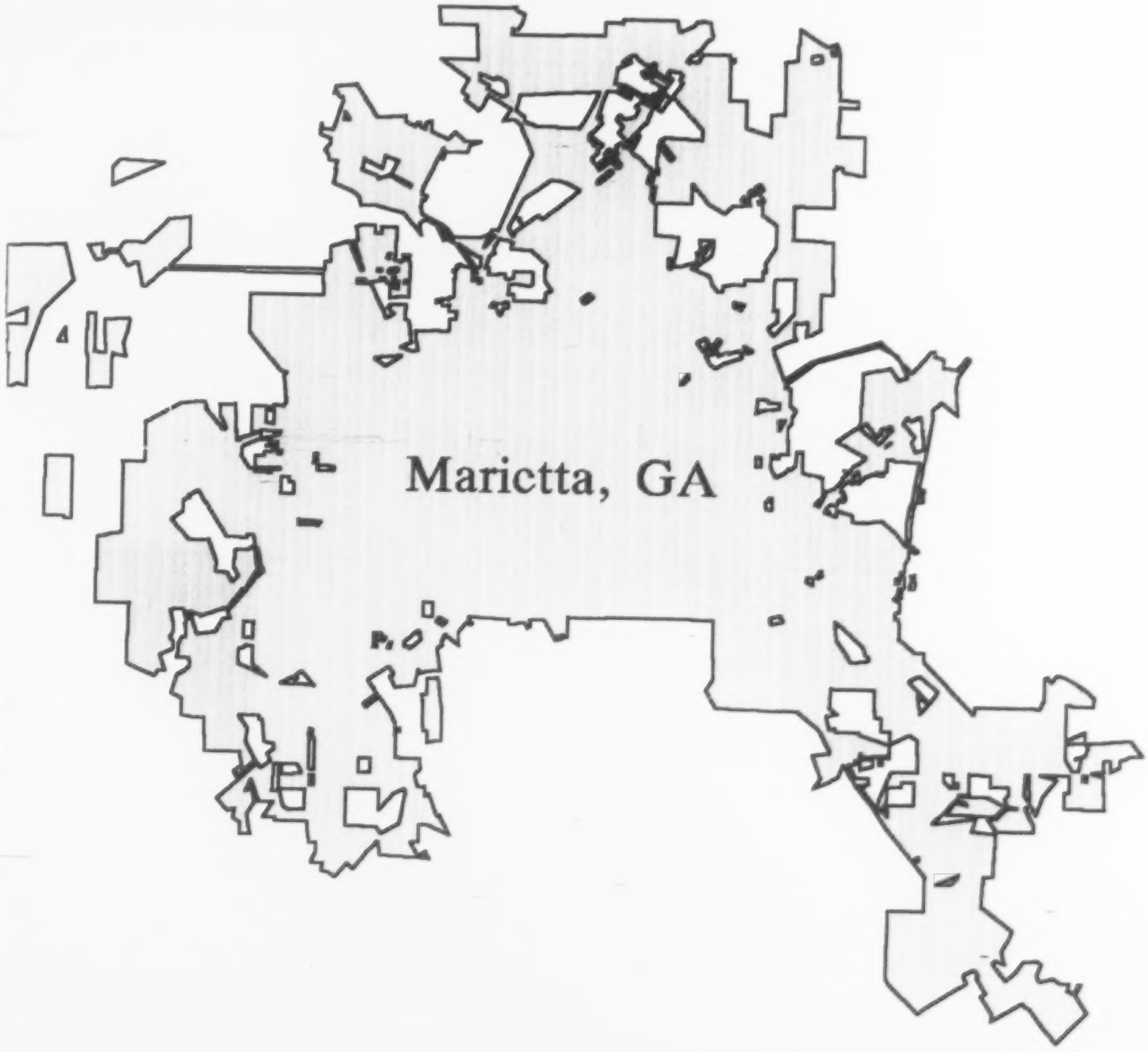
(DATA SOURCE: 1990 US Census
PL94-171 Population Counts)

Defendant's Exhibit 83



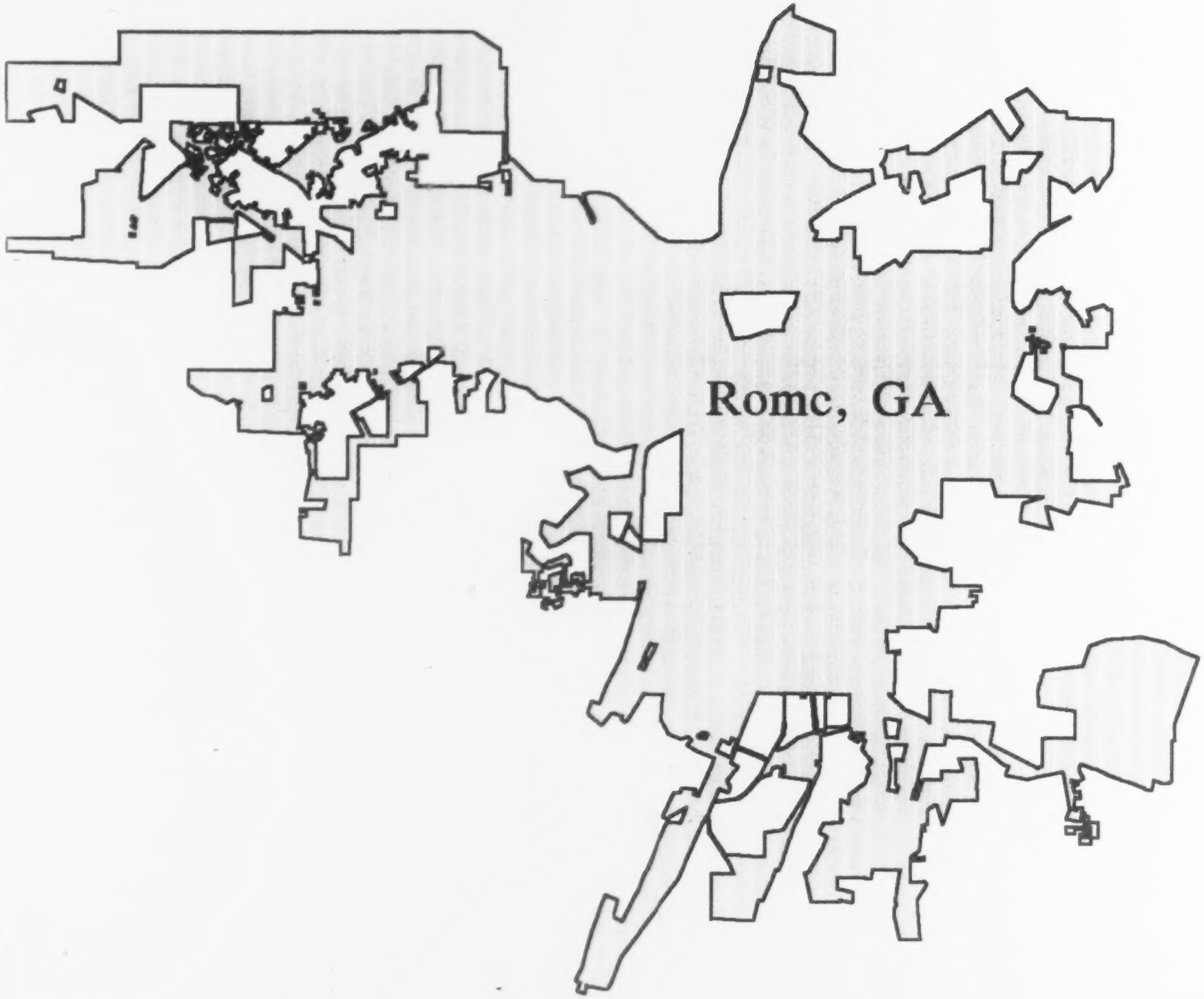
Defendant's Exhibit 87

Defendant's Exhibit 92

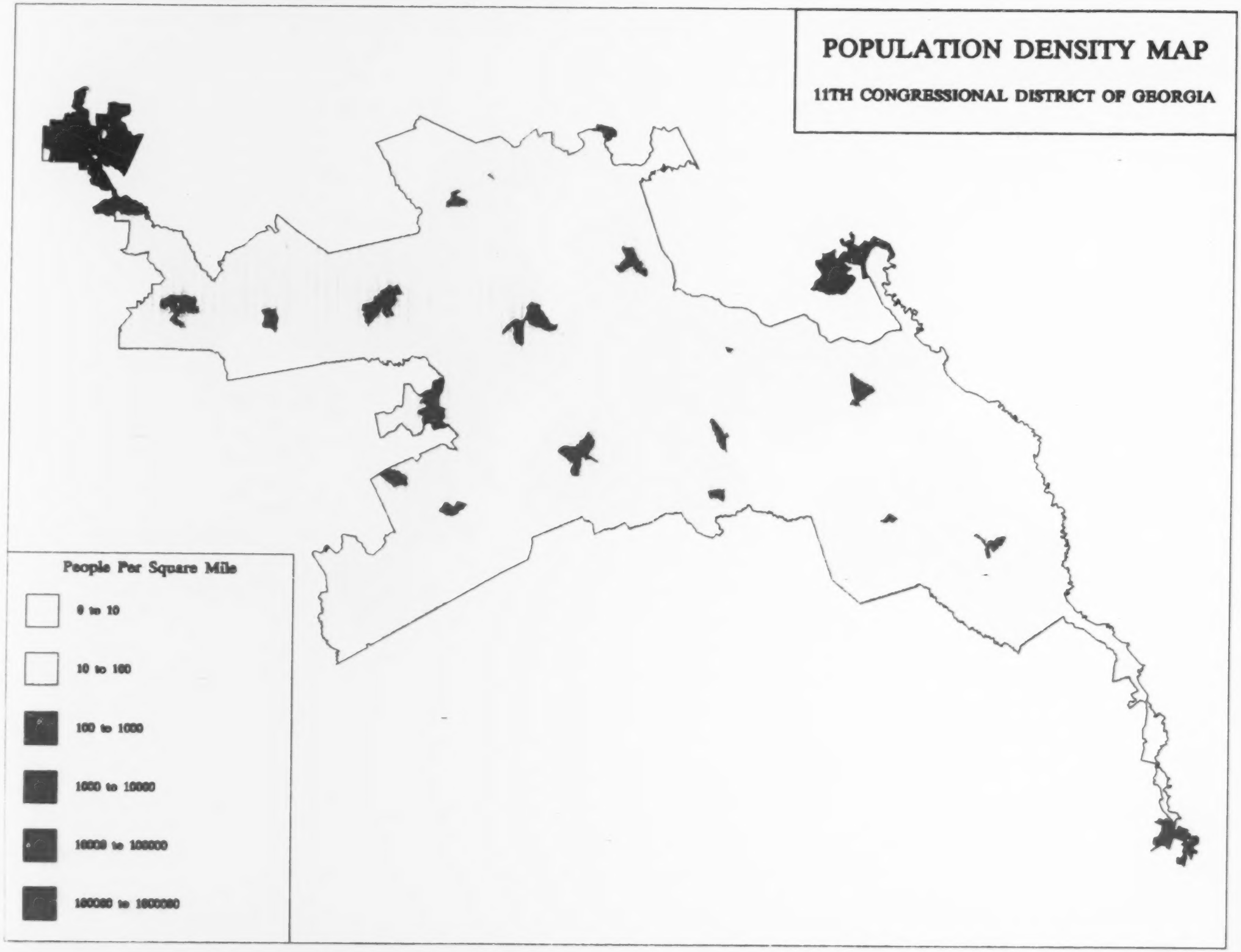


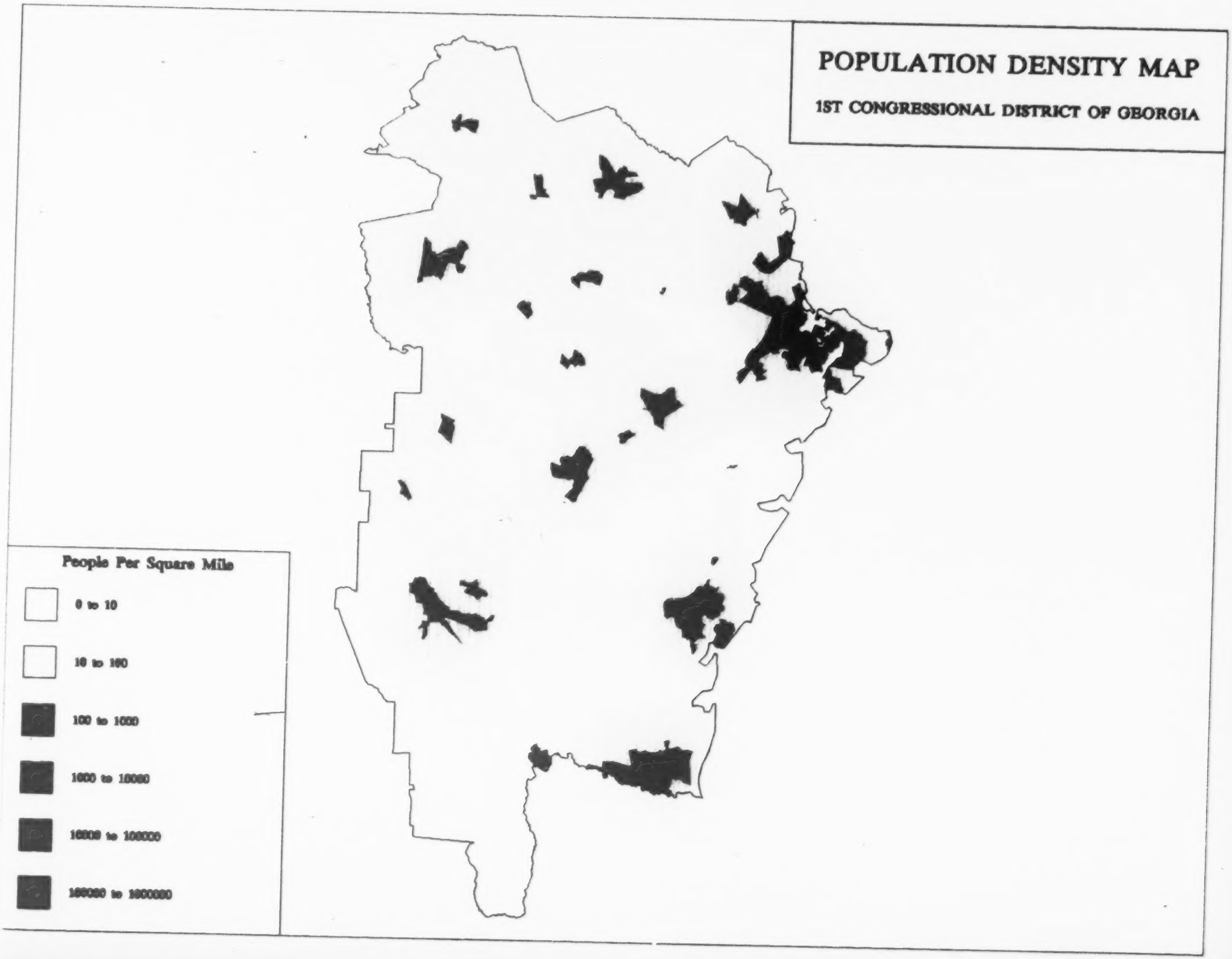
Defendant's Exhibit 93

Defendant's Exhibit 95



Defendant's Exhibit 100


POPULATION DENSITY MAP
11TH CONGRESSIONAL DISTRICT OF GEORGIA
People Per Square Mile
0 to 10
10 to 100
100 to 1000
1000 to 10000
10000 to 100000
100000 to 1000000

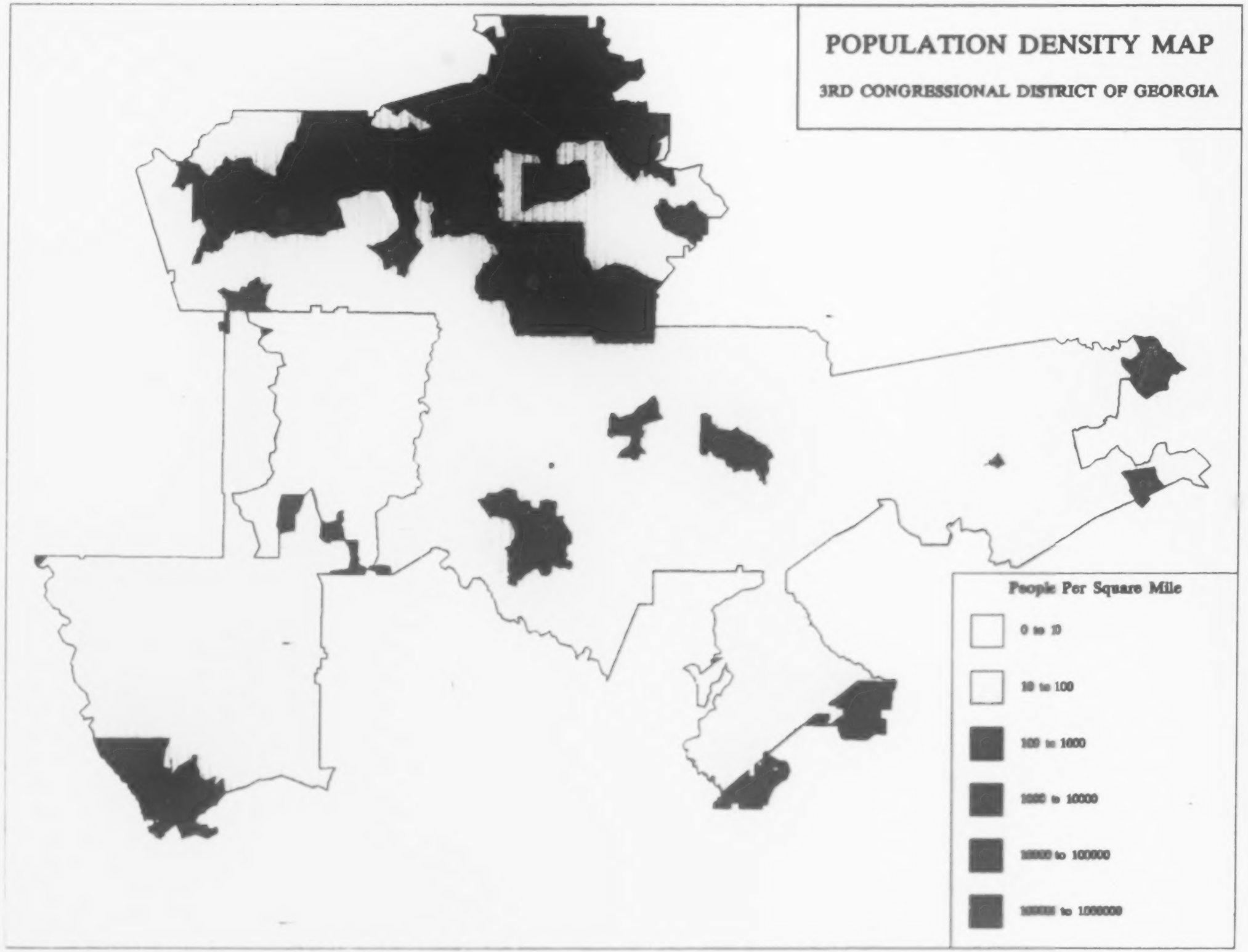

POPULATION DENSITY MAP
1ST CONGRESSIONAL DISTRICT OF GEORGIA
People Per Square Mile
0 to 10
10 to 100
100 to 1000
1000 to 10000
10000 to 100000
100000 to 1000000

POPULATION DENSITY MAP

2ND CONGRESSIONAL DISTRICT OF GEORGIA

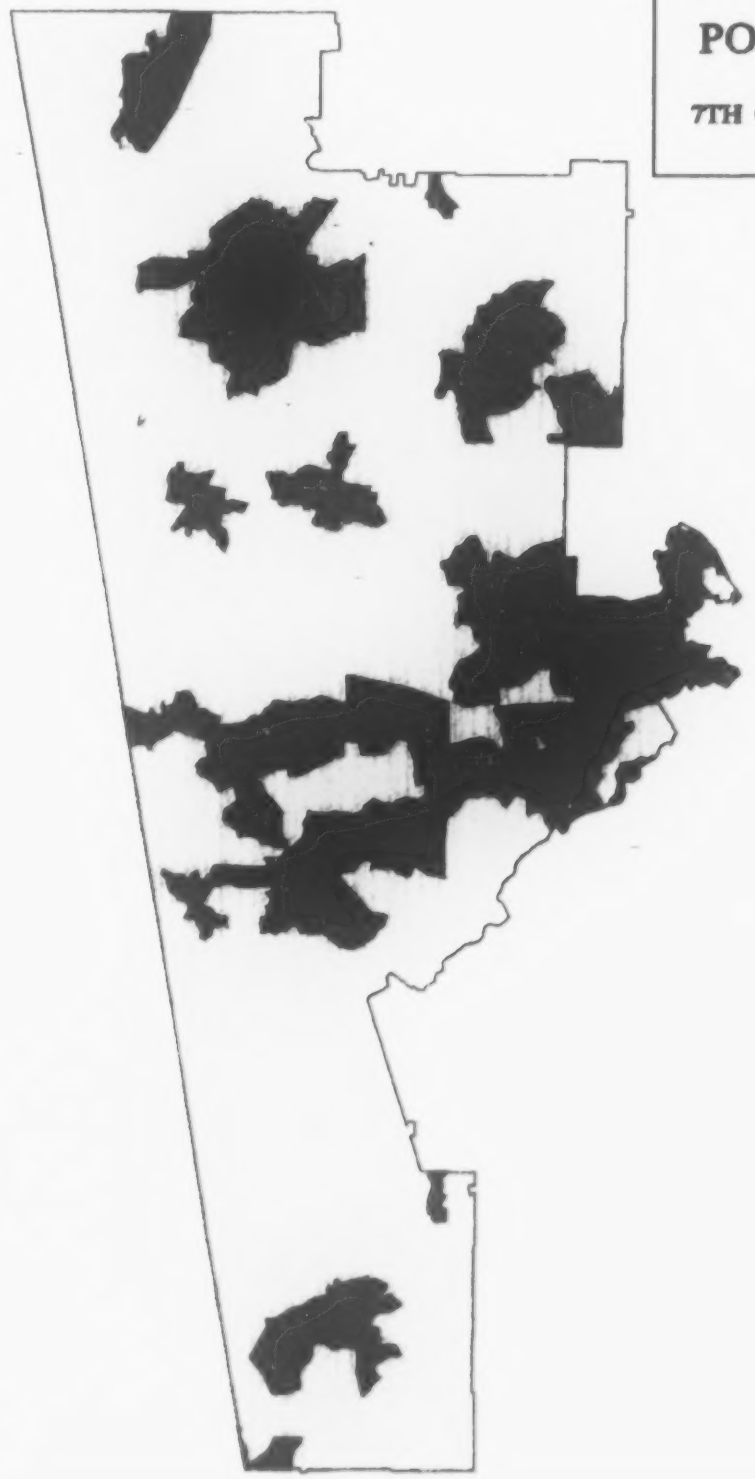
People Per Square Mile

- 0 to 10
- 10 to 100
- 100 to 1000
- 1000 to 10000
- 10000 to 100000
- 100000 to 1000000


POPULATION DENSITY MAP
3RD CONGRESSIONAL DISTRICT OF GEORGIA
People Per Square Mile
0 to 10
10 to 100
100 to 1000
1000 to 10000
10000 to 100000
100000 to 1000000

POPULATION DENSITY MAP

7TH CONGRESSIONAL DISTRICT OF GEORGIA

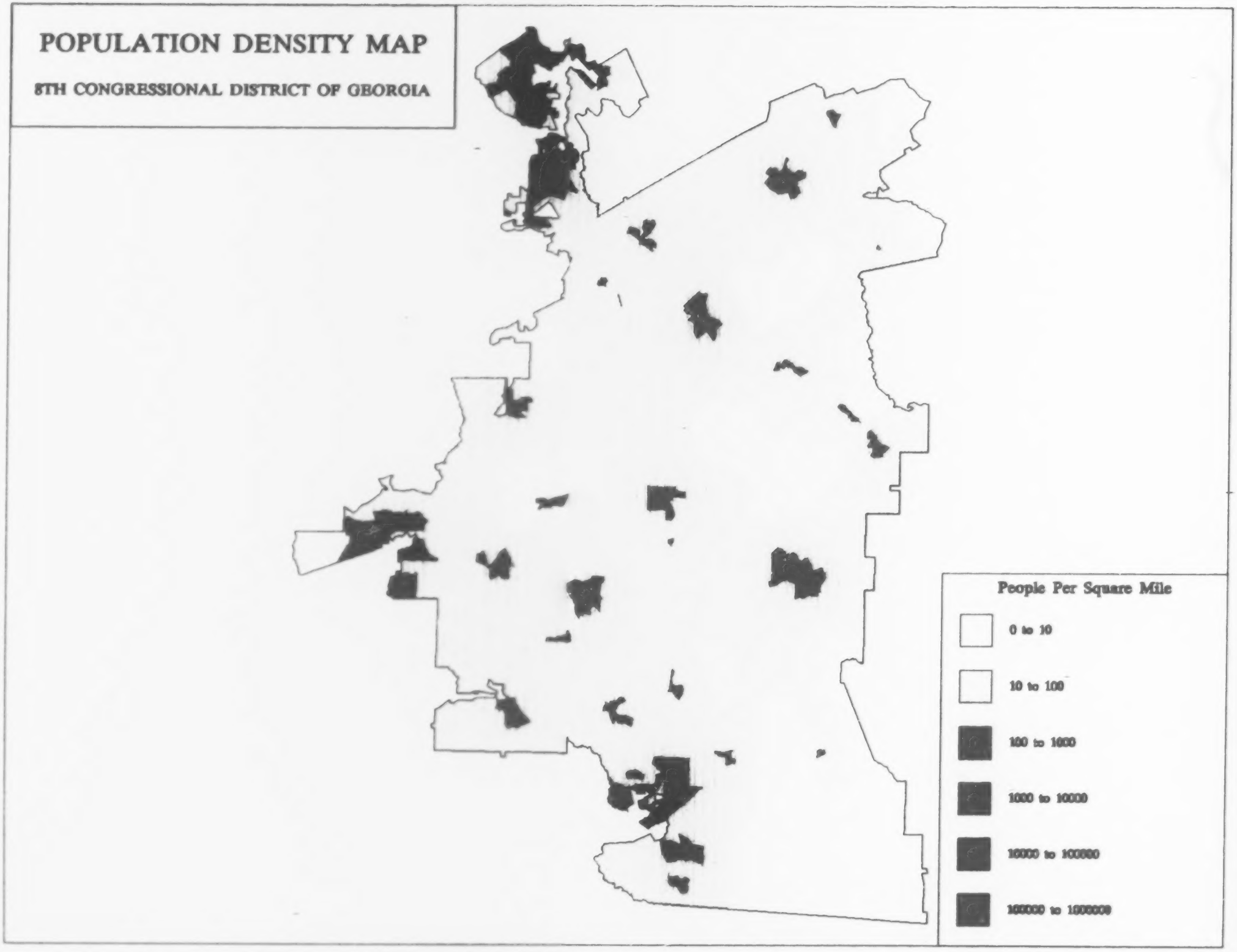


People Per Square Mile

- 0 to 10
- 10 to 100
- 100 to 1000
- 1000 to 10000
- 10000 to 100000
- 100000 to 1000000

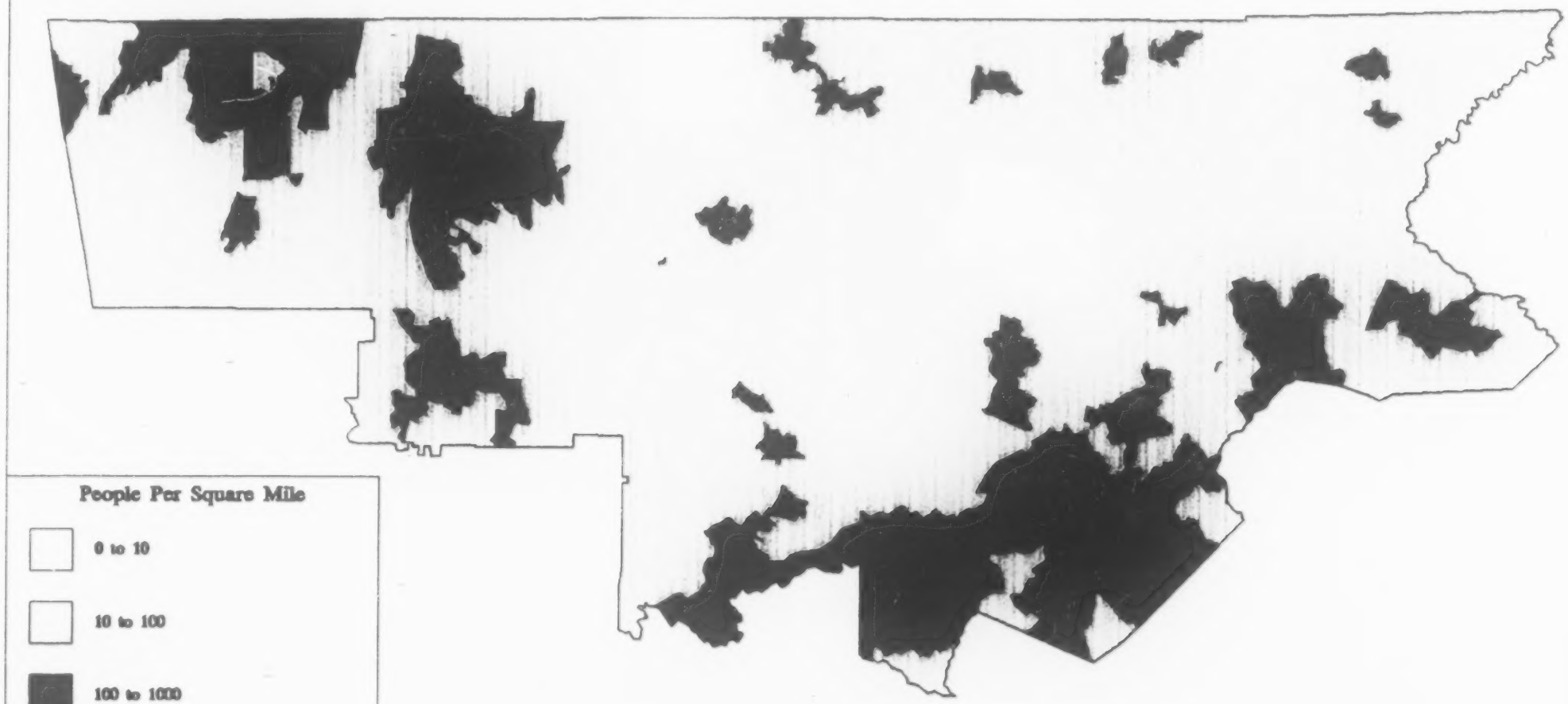
POPULATION DENSITY MAP

8TH CONGRESSIONAL DISTRICT OF GEORGIA



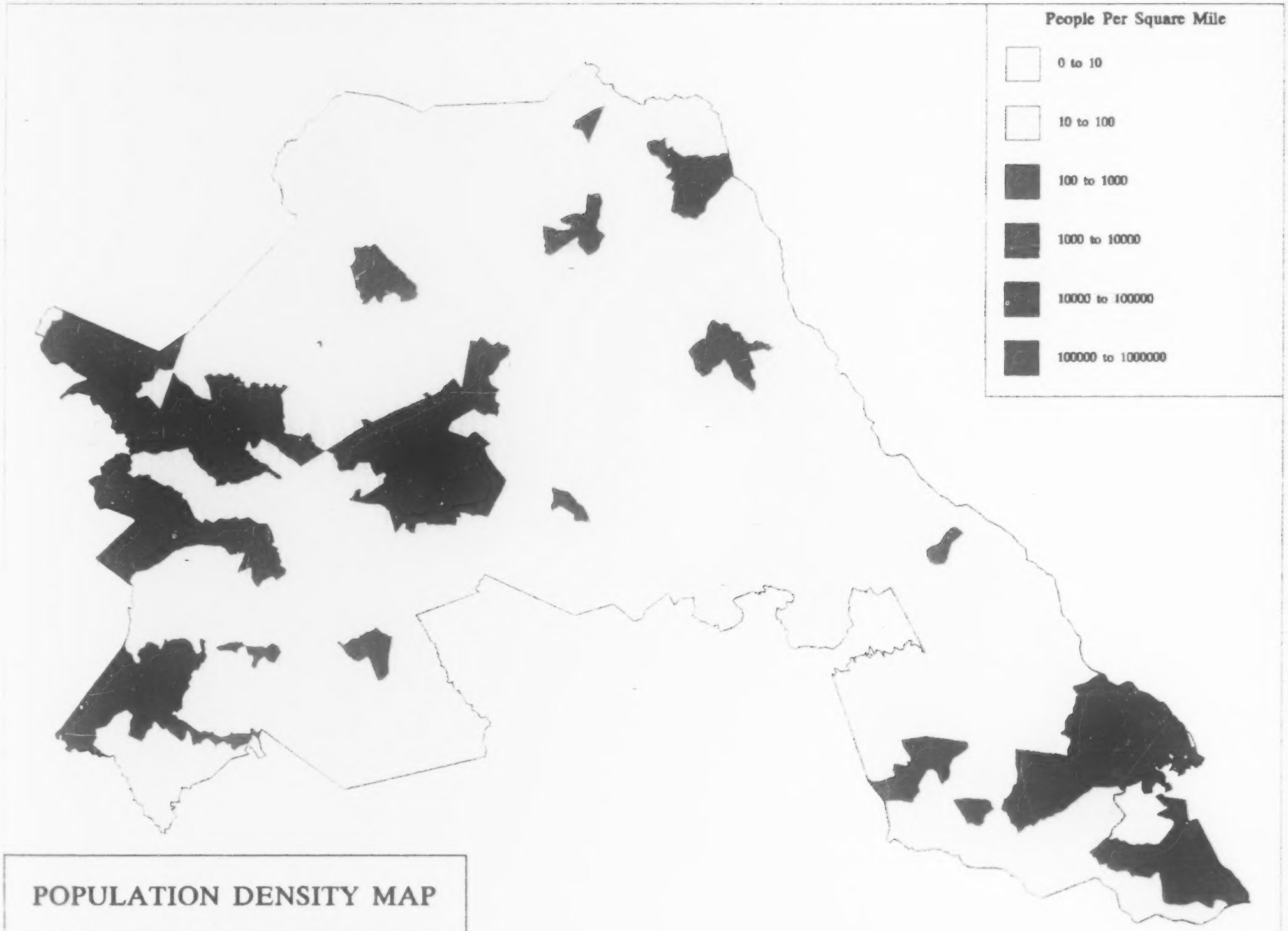
POPULATION DENSITY MAP

9TH CONGRESSIONAL DISTRICT OF GEORGIA



People Per Square Mile

- 0 to 10
- 10 to 100
- 100 to 1000
- 1000 to 10000
- 10000 to 100000
- 100000 to 1000000

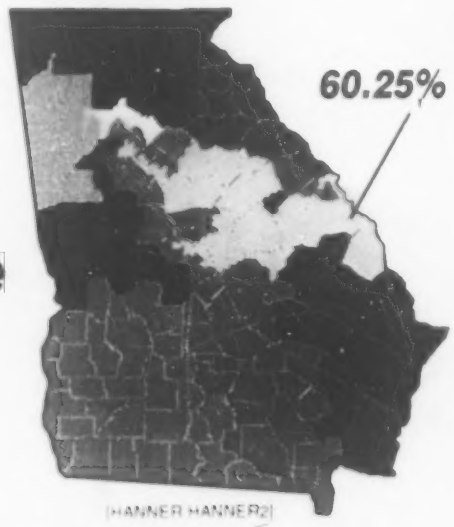
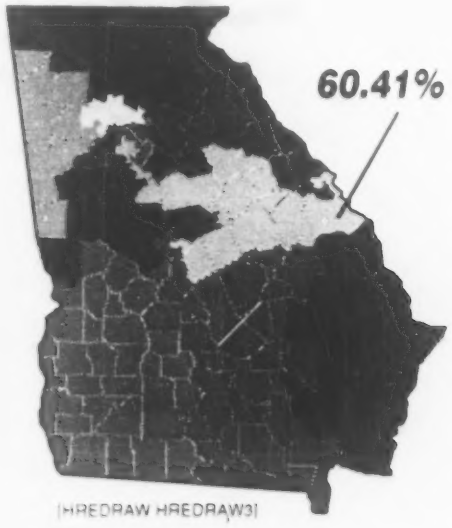
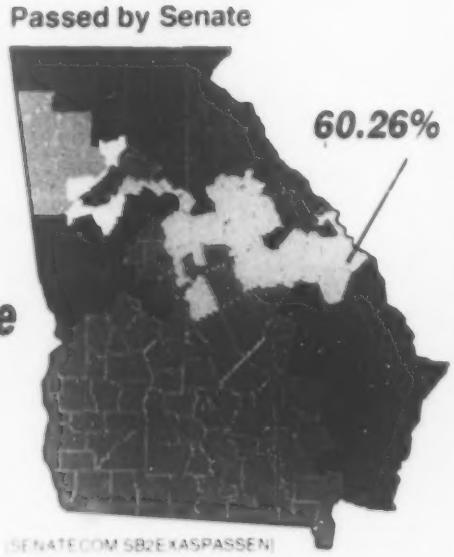
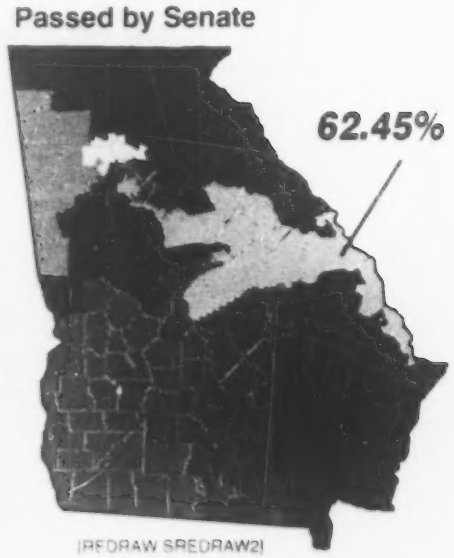
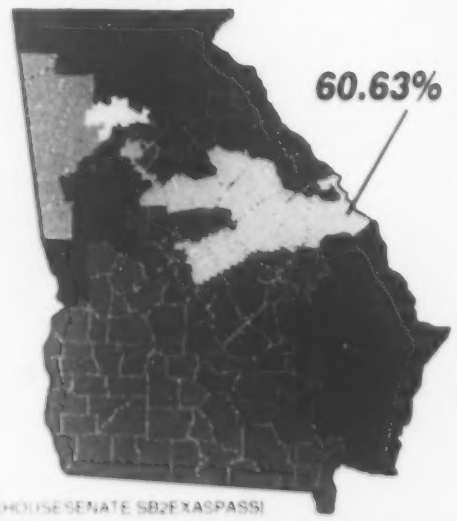
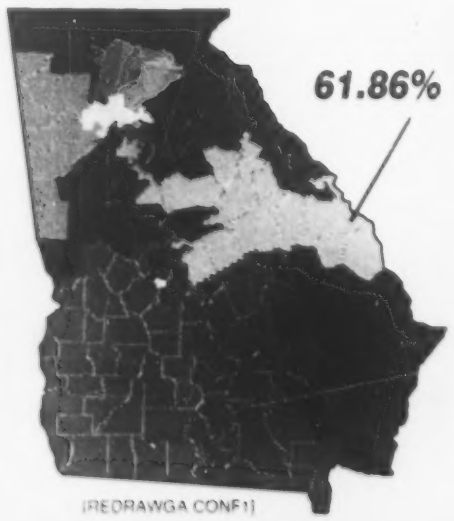
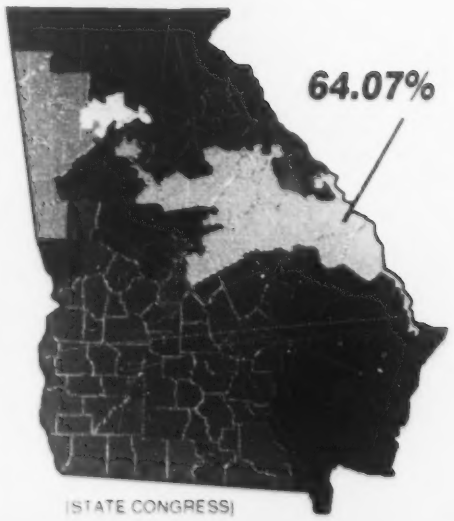


POPULATION DENSITY MAP

10TH CONGRESSIONAL DISTRICT OF GEORGIA

Plans Approved by Georgia House and Senate

(With Total Black Population Percentage in the 11th Congressional District)

	Round 1	Round 2	Round 3
House	**Passed by House**  [HANNER HANNER2]	**Passed by House**  [HREDRAW HREDRAW3]	
Senate	**Passed by Senate**  [SENATECOM SB2EXASPASSEN]	**Passed by Senate**  [REDRAW SREDRAW2]	
Final	**First Submission**  [HOUSESENATE SB2EXASPASS]	**Second Submission**  [REDRAWGA CONF1]	**Precleared Plan**  [STATE CONGRESS]

DEFENDANT'S EXHIBIT
DOJ 76
NO.

Plaintiff's Exhibit 2

[seal]

U.S. Department Justice

Civil Rights Division

Office of the Assistant Attorney General
Washington D.C. 20530

Jan. 21, 1992

Mark H. Cohen, Esq.
Senior Assistant Attorney General
Department of Law
132 State Judicial Building
Atlanta, Georgia 30334

Dear Mr. Cohen:

This refers to Act No. EX29 of the 1991 Extraordinary Session, which provides for the 1991 redistricting of House districts and a change in method of election from 130 single-member districts, 24 multimember districts and two floterial districts to 180 single-member districts; Act No. EX28 of the 1991 Extraordinary Session, which provides for the 1991 redistricting of the 56 Senate districts; and Act No. EX27 of the 1991 Extraordinary Session, which provides for the implementation of an increase from ten to 11 Congressional seats for the State of Georgia and the 1991 redistricting of the 11 Congressional districts, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Additional information necessary to complete our review of all three Acts was

requested on November 22, 1991; responses were received on November 29 and December 10 and 18, 1991.

We have carefully considered the information you have provided, as well as Census data and information and comments from other interested persons. With regard to the change in the method of electing the House members from 130 single-member districts, 24 multimember districts and two floterial districts to 180 single-member districts, the Attorney General does not interpose any objection. However, we note that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the statewide redistricting plans, we would note that, as it applies to the redistricting process, the Voting Rights Act requires the Attorney General to determine whether the submitting authority has sustained its burden of showing that the legislative choices made under a proposed plan are free of racially discriminatory purpose or retrogressive effect and whether the submitted plan will result in a clear violation of Section 2 of the Act. In the case of a statewide redistricting of the State of Georgia, this examination requires us not only to review the overall impact of the plan on minority voters, but also to understand the reasons for and the impact of the legislative choices that were made in arriving at the particular plan.

In making these judgments, we apply the legal rules and precedents established by the federal courts and our published administrative guidelines. See, e.g., 28 C.F.R.

51.52(a), 51.55, 51.56. For example, we cannot preclear those portions of a plan in which the state legislature has deferred to the interests of incumbents while refusing to accommodate the community of interest shared by insular minorities. See, e.g., *Garza v. Los Angeles County*, 918 F.2d 763, 771 (9th Cir. 1990), *cert. denied*, 111 S. Ct. 681 (1991); *Ketchum v. Byrne*, 740 F.2d 1398, 1408-09 (7th Cir. 1984), *cert. denied*, 471 U.S. 1135 (1985). Such concerns are frequently related to the needless packing of minority constituents into a minimal number of districts in which they can expect to elect candidates of their choice or fragmenting minority concentrations which have a community of interest. See 28 C.F.R. 51.59. We endeavor to evaluate these issues in the context of the statutory and demographic changes which compelled the particular jurisdiction's need to redistrict (*id.*). Finally, our entire review is guided by the principle that the Act insures fair election opportunities and does not require that any jurisdiction attempt to guarantee racial or ethnic proportional results.

We have reviewed the legislative choices made by the State of Georgia with regard to all three statewide plans in light of these principles. At the outset, we note that elections in the State of Georgia are characterized by a pattern of racially polarized voting which appears to be exacerbated by the requirement that state legislative and congressional positions be elected by a majority of the vote. In addition, a concern has been raised that throughout the legislative process, certain rules and procedures were adopted which discouraged alternative redistricting plans from being presented and debated. In fact, it was charged that the state often rushed the process in order to

manipulate the adoption of plans that minimize minority voting strength overall.

The House Plan

With respect to the House plan, it appears that in several areas discussed below, boundary lines logically could be drawn so as to recognize black population concentrations in a manner that would provide black voters more effectively with an opportunity to participate in the political process and to elect candidates of their choice. Another factor which appears to impact adversely on minority voting strength was the state's treatment of black concentrations to protect incumbents. Thus, the state's "work group" system and rules for the members of the House worked to benefit incumbents and minimize black voting strength.

In the southwest region involving proposed House District 159, and in the Peach and Houston Counties area, the proposed plan fails to recognize black population concentrations although reasonable alternative configurations of boundary lines would permit additional districts that would provide black voters the opportunity to elect candidates of their choice. While we have noted the state's assertion that the division of the black community in these areas into several districts enhances black voting strength by providing black voters an opportunity to influence elections in additional districts, it appears that the plan in fact was designed to ensure the re-election of white incumbents.

In House District 178 and in the Clayton County area, involving proposed House District 93, the proposed

House plan appears to manipulate the configurations to limit the racial percentages and to protect the incumbents in these areas. Furthermore, alternative plans were available that provide for effective black majority districts and the state again fails to provide a nondiscriminatory reason for rejection of such alternatives.

In Chatham County and in the Glynn/McIntosh/Liberty Counties area, alternatives which avoided unnecessary retrogression and which recognized minority voting potential by drawing additional viable black majority districts were rejected in what appears to be an effort to accomodate incumbent legislators at the expense of black voters. Similarly, in drawing the proposed districts, the state fragmented the politically cohesive and active Burke County voters into three different House districts.

In the Muscogee region, in following the arbitrary and discriminatory work group lines in drawing five districts internally within Muscogee County, the state avoided serious consideration of alternative plans which create a third district in the Muscogee and Chattahoochee Counties area which would provide black voters with an equal opportunity to participate in the political process and elect a candidate of their choice to office.

Despite a significant population decline that would normally require a reduction from four House districts to three House districts in Dougherty County, the state stretches unnecessarily to retain four House districts based in this county. To accomplish this, the state projects a slender finger of predominately white District 164, which is comprised of all of Mitchell and part of Colquitt Counties, up into Dougherty County to include a small

number of Dougherty County residents. Concerns were raised that the state's choices of boundary lines in this area were a response to requests that lines be drawn to avoid control by black voters' representatives by contriving to maintain an equal number of white and black legislators on the Dougherty County legislative delegation. The state has not proffered a nonracial justification for this unusual configuration other than to say that this "finger" was drawn primarily due to specific requests.

The Senate Plan

The Senate plan likewise includes instances in which the concerns of the incumbents were placed ahead of black voting potential. In the DeKalb/Clayton Counties area (proposed District 44), the Twiggs/Wilkinson Counties area (proposed District 26), and the Fulton/Cobb Counties area (proposed Districts 33 and 38) it appears that protection of incumbents motivated the fragmentation of concentrations of black residents who clearly have a community of interest with the residents of the adjacent black majority district.

In the southwest portion of the state, as well as east-central Georgia, there are many majority black counties which have been divided between several majority white districts or drawn into a district such as proposed District 12 in which the black percentage of voters was minimized to protect the white incumbent. We note that there were available to the state alternatives which recognized the black voting potential in these areas by drawing three majority black districts in the southwest (in the area of proposed Districts 8, 11, 12, 14, and 15) and a second

majority black district in the east-central portion of the state (in the area of proposed Districts 4, 20, 22, 24, and 25).

We understand also that, late in the redistricting process, proposed Senate District 2 was altered by including several predominantly white, affluent, politically active precincts while excluding adjacent black concentrations. The state has not, to date, made a persuasive showing that these particular boundary choices are free of a discriminatory purpose and effect.

The Congressional Plan

With regard to the Congressional redistricting plan, we note that Georgia has gained one additional Congressional seat because of an increase in the state's population. A concern was raised with regard to the principle underlying the Congressional redistricting, namely that the Georgia legislative leadership was predisposed to limit black voting potential to two black majority districts. The proposed plan provides for districts which attempt to recognize, for the most part, black voting potential in the Fulton/DeKalb area and the east-central portions of the state but do not recognize the black voting potential of the large concentration of minorities in southwest Georgia. While Section 5 considerations certainly do not dictate that the state adopt any particular configuration, we note that several alternative redistricting approaches were suggested to the legislature during the process. Notwithstanding these alternatives, the state redistricting leadership did not make a good faith attempt to recognize the concentrations of black voters in

the southwest and has not yet been able to adequately explain the departure from its own stated criteria and what appears to be resulting minimization.

As to the proposed 11th Congressional district, we note that the exclusion of the minorities in adjacent Baldwin County from this majority black district not only limits the black percentage of the district but also ignores the community of interest which black residents of Baldwin County share with those in the surrounding counties. The state has indicated that this configuration resulted due to the extensive health care complex in Baldwin County. This reason, however, appears to be pretextual.

Similarly, with regard to the proposed 5th Congressional district, the state has not satisfactorily explained the reasons for including large portions of predominantly white precincts in Fayette County while excluding adjacent black concentrations (e.g., in Cobb County) which have a community of interest with the residents of the 5th district. This is of particular concern considering the retrogressive impact these proposed boundary lines have on black voters' opportunity for representation on the Department of Transportation board.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the state's burden has been sustained in this instance with respect to the three proposed plans under review. Therefore, on behalf of the Attorney General, I must object to the 1991 redistricting plans for Georgia State House, Senate and Congressional districts to the extent that each incorporates the proposed configurations for the areas discussed above.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed 1991 House, Senate and Congressional redistricting plans have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objections. However, until the objections are withdrawn or a judgment from the District of Columbia Court is obtained, the 1991 redistricting plans for Georgia House, Senate and Congressional districts continue to be legally unenforceable. *Clark v. Roemer,* 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Georgia plans to take concerning these matters. If you have any questions, you should call Sandra Coleman (202-307-3718), Deputy Chief of the Voting Section.

Sincerely,

/s/ John R. Dunne
John R. Dunne
Assistant Attorney General
Civil Rights Division

Plaintiff's Exhibit 3A

The Department of Law
State of Georgia
Atlanta
30334

[SEAL]
MICHAEL J. BOWERS
ATTORNEY GENERAL

132 STATE JUDICIAL BUILDING
TELEPHONE
(404) 656-3300
FAX (404) 651-9148

BY FEDERAL EXPRESS

March 3, 1992

SUBMISSION UNDER SECTION 5 OF THE VOTING RIGHTS ACT EXPEDITED HANDLING REQUESTED

Mr. Gerald W. Jones
Chief, Voting Section
Civil Rights Division
United States Department of Justice
320 First Street, N.W.
Room 716
Washington, D.C. 20035-6128

RE: Reapportionment of Congressional Districts for the State of Georgia; Submission of Act No. 638, pursuant to the Voting Rights Act of 1965, as amended; Your File Nos. 91-3556, 91-3557, and 91-3558.

Dear Mr. Jones:

Pursuant to the objections to Act No. EX27 of the 1991 Extraordinary Session of the Georgia General Assembly interposed on behalf of the United States Attorney General by Mr. John R. Dunne by letter dated January 21, 1992, please find enclosed as *Exhibit C-1* a certified copy of Act No. 638 of the 1992 Regular Session of the Georgia

General Assembly for Preclearance under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c. As shown below, the State of Georgia asserts that the changes to Georgia's Congressional reapportionment plan contained in Act No. 638 are in response to the Attorney General's objections and comply with the Voting Rights Act in that the changes do not have the purpose or effect of denying or abridging the right to vote on account of race.

The differences between Act No. 638 and Act No EX27 are fully explained below. The changes were made for one of two reasons: (1) a direct response to the specific objections made by the Justice Department in its January 21, 1992, objection letter; and (2) the "ripple" effect to neighboring districts caused by those adjustments made in response to the Justice Department's objections.

Initially, as previously stated in our re-submissions of Georgia's House and Senate reapportionment plans on February 20, 1992, we respectfully urge that you give the most expedited consideration to this submission, since the qualification for candidates for the Georgia State House begins on April 27, 1992. In addition, the Georgia General Assembly currently is in session, so that if there are any further objections to the House Plan, we would urge that they be transmitted to us within the next several weeks in order for the General Assembly to consider such objections during its Regular Session. Finally, a lawsuit has been filed by two plaintiffs from Cobb County asking a three-judge federal court in Atlanta to postpone the qualifying and primary dates in the event the Justice Department does not approve Georgia's reapportionment plans, and, if necessary, to establish new districts. *Jones v.*

Miller, U.S.D.C., N.D.Ga., Civil Action No. 1:92-CV-330-JOF. United States District Judge J. Owen Forrester has scheduled a hearing for April 1, 1992, and has indicated he may assume jurisdiction of this matter in the event any of the plans are not approved by the Justice Department by that date.

We also are including the following additional exhibits in support of Act No. 638:

Exhibit C-2 – Duplicate statewide (Exhibit C-2.1) and metro Atlanta (Exhibit C-2.2) maps of the new Georgia Congressional redistricting plan embodied in Act No. 638.

Exhibit C-3 – Statistics showing total and voting age population by race for each proposed Congressional District in Act No. 638 (Exhibit C-3.1) and election statistics for 1988-1990 General Elections, 1990 Democratic runoff primary, and 1988 Democratic Presidential Preference Primary divided into proposed Congressional districts (Exhibit C-3.2).

Exhibit C-4 – Transcripts of the Senate and House Reapportionment Committee Meetings subsequent to the Justice Department's January 21, 1992, letter of objection, as follows:

Exhibit C-4.1 – February 17, 1992 meeting of the Senate Reapportionment Committee

Exhibit C-4.2 – February 18, 1992 meeting of the Senate Reapportionment Committee

Exhibit C-4.3 – February 18, 1992 meeting of the House Reapportionment Committee

Exhibit C-4.4 – February 19, 1992 meeting of the House Reapportionment Committee

Exhibit C-5 – Alternative maps in duplicate presented to and the plan adopted by the Senate Reapportionment Committee subsequent to the Justice Department's January 21, 1992, letter of objection.

Exhibit C-6 – Alternative maps in duplicate presented to and the plan adopted by the House Reapportionment Committee subsequent to the Justice Department's January 21, 1992, letter of objection.

Exhibit C-7 – Amendments presented on the floor of the Georgia Senate.

Exhibit C-8 – Amendments presented on the floor of the Georgia House.

Exhibit C-9 – Map considered by the House and Senate Conference Committee on Congressional reapportionment, and adopted as Act No. 638 (same map as Exhibit C-2).

Exhibit C-10 – videotape of the floor debate of the Georgia State Senate and Georgia House on the proposed Congressional plan and the discussions of the Conference Committee.

Exhibit C-11 – Computer disk containing the revised Congressional reapportionment plans.

Exhibit C-12 – Newspaper clippings regarding Congressional reapportionment subsequent to the Justice Department's January 21, 1992, letter of objection (*see also* Exhibit S-10 of Senate Plan submission of February 20. 1992).

SUMMARY OF CHANGES TO THE CONGRESSIONAL PLAN

Mr. Dunne's January 21, 1992, letter of objection raised three areas where the Justice Department concluded that the State of Georgia had failed to meet its burden of showing that the proposed redistricting plan contained in Act No. EX27 did not have the prohibited purpose or effect of diluting minority voting strength under Section 5. Act No. 638 responds to the Attorney General's January 21, 1992, objections as follows:

The 5th Congressional District

With respect to the 5th Congressional District, the only current black majority Congressional district in the State of Georgia, Mr. Dunne indicated as follows:

> . . . the state has not satisfactorily explained the reasons for including large portions of predominently white precincts in Fayette County while excluding adjacent black concentrations (e.g., in Cobb County) which have a community of interest with the residents of the 5th district. This is of particular concern considering the retrogressive impact these proposed boundary lines have on black voters' opportunity for representation on the Department of Transportation board.

In response to this objection, Act No. 638 removes all of Fayette County from the 5th District and adds the two adjacent black precincts (Howells 1 and 2) in Cobb County. The precincts added in Cobb County are the same ones that were used in drawing Senate District 38. It should be noted that the only four precincts and a small portion of a fifth precinct in Clayton County included in

the 5th Congressional District are majority black precincts, ones that were included in the plan previously submitted to the Justice Department and not objected to. The result of this change, compared to the previous plan contained in Act No. EX27, is shown below:

District No.	Total Pop. % Deviation	Black Pop. % of Total	VAP % of total	Black VAP % of total
5 (old)	591871	367747	440208	254608
	0.50	62.13	74.38	57.84
5 (new)	586485	365206	440910	253413
	-0.41	62.27	75.18	57.47

It should also be noted that the changes mandated by the Justice Department letter do not result in any retrogressive impact on the ability of black senators and representatives to elect a member of their choice to the Board of the Department of Transportation. In fact, a comparison between the existing Congressional plan, the plan contained in Act No. EX27 that was rejected by the Justice Department, and the plan contained in Act No. 638 shows that none of the proposed plans result in any retrogressive effect in the ability of minority members of the House and Senate to influence the election of the members of the Board of Transportation from the 5th Congressional District:

Congressional Plan	# of House/ Senate Black Districts	# of House/ Senate White Districts
1981 Plan	18*	14
Act No. 27EX	18	12
Act No. 638	18	12

*excludes two "at-large" districts, which no longer exist in current House Plan

See also Exhibit C-4.2, pp. 7-9. Clearly, the changes made to the 5th Congressional District under Act No. 638 comply completely with the Justice Department's previous letter of objection, in that: (1) no portion of Fayette County remains in the 5th District, (2) the adjacent black precincts in Cobb County are included in the 5th District, (3) only black precincts in Clayton County remain in the 5th District, and (4) the configuration of the 5th District has no retrogressive impact on the ability of black voters to elect a candidate of their choice to the Board of Transportation in that district. Therefore, we respectfully urge that the changes to the 5th Congressional District be approved.

The 11th Congressional District

The only objection raised with respect to the 11th Congressional District, which was drawn in Act No. EX27 as Georgia's new and second minority district, was "the exclusion of minorities in adjacent Baldwin County from this majority black district." In response to this objection, Act No. 638 adds to the 11th Congressional District all those heavy black concentrations of voters from Baldwin County. The effect of this change results in the following comparison between the rejected and new proposed plans:

District No.	Total Pop. % Deviation	Black Pop. % of Total	VAP % of total	Black VAP % of total
11 (old)	583500	353769	415339	235112
	-0.92	60.63	71.18	56.61
11 (new)	588218	363894	417681	242110
	-0.12	61.86	71.01	57.97

Once again, this alteration was done expressly to meet the Justice Department objection, and we ask that it be expeditiously approved.

III. The 2nd Congressional District

The final area of objection in the January 21, 1992 letter centers on the percentage of minorities in the 2nd Congressional District. Under Act No. EX27, the 2nd Congressional District had a black population of 39.47% and a black voting age population of 35.37%. The objection letter indicates that the State of Georgia did not satisfactorily explain the rejection of other alternative configurations for this district and that "the state redistricting leadership did not make good faith attempt to recognize the concentrations of black voters in the southwest."

While we would dispute any allegation that there was any purposeful effort to dilute minority voting strength in the drawing of the congressional districts in the 1991 Special Session, the objection of the Justice Department has resulted in the General Assembly once again looking at the southwest Georgia area to determine whether a viable black majority Congressional district could be drawn, or if not, whether the percentage of black voters in the 2nd district could be significantly increased so as to

enhance the ability of minorities to influence the election of a member of Congress from that region.

There were several proposals for a reconfiguration of the 2nd district considered. The General Assembly was faced with two basic options. One was to enhance the percentage of minorities in the 2nd Congressional District while maintaining the viability of both the 5th and 11th Congressional Districts as effective black majority districts. Another option was to attempt to create a more influential black southwest district on paper at the expense of placing the viability of the 11th District in serious jeopardy. The General Assembly chose the former option.

The 2nd District as contained in Act No. 638 has a significantly higher percentage of black population and voting age population than that drawn in Act No. EX27, as shown below:

District No.	Total Pop. % Deviation	Black Pop. % of Total	VAP % of total	Black VAP % of total
2 (old)	587346	231843	415158	146861
	-0.27	39.47	70.68	35.37
2 (new)	583230	286629	409358	184258
	-0.97	49.15	70.19	45.01

It should also be noted that with the Fort Benning population removed, the 2nd District becomes a 50% black population district. The 2nd District as proposed recognizes the concentrations of black population in southwest Georgia without adversely affecting the 11th District. Indeed, any county which can reasonably be deemed to be included in southwest Georgia with a black population of over 40% was placed within the 2nd Congressional

District in whole or in part (to pick up only the black concentrations). While significant numbers of blacks from Muscogee, Crawford, Peach, Dooly, Dougherty, and Lowndes Counties were included, those concentrations of white population in Dougherty and Lowndes Counties were removed.

It is noteworthy that the only proposals presented which configured the 2nd District so as to achieve a percentage of black population *and* voting age population in excess of 50% took the 2nd District into Bibb County. This had the impact of substantially reducing the percentage of black population in the 11th District, thereby threatening the viability of that second majority black district without making the 2nd District substantially more viable. When the 2nd District is drawn to include the black population concentrations in Bibb County, the 11th District must be reconfigured to extend all the way into Chatham County in order to attempt to maintain the black concentrations in that district.

The reason the General Assembly chose not to adopt a configuration for the 2nd District which would have altered the 11th District in this fashion is two-fold. First, if the 11th District extends from the Atlanta area in DeKalb County into the metropolitan areas of Richmond, Bibb, *and* Chatham Counties, a candidate to be successful will have to run in four major media markets in Georgia. This would likely present a significant problem for any minority candidate in the 11th District, as recognized even by the proponents of the "Brooks-McKinney" plan. *See* Exhibit C-4.3, pp. 14-16. Consequently, increasing the minority population from 50% to 52-58% in the 2nd District would endanger what would otherwise be a viable

second minority black district already established by the General Assembly in the August, 1991, special session and recognized with approval by the Justice Department.

Second, it is clear that even if the population percentage is increased several more points in the 2nd District from that contained in Act No. 638, the 2nd District will still be no more than an influence district for minority voters. Black voter registration in this area has been historically low, so that the 2nd District, in any rational configuration, would not be a viable black majority district regardless of whether the black population percentage is 50% or approaches the mid-50% range. Any purported further "maximization" of the 2nd District would undoubtedly jeopardize the viability of the 11th District, so that the State of Georgia would, under such a scenario, have but one effective minority district. The alternative configurations for the 2nd District which extend into Bibb County and extend the 11th District into Chatham County therefore would result in the dilution of minority voting strength in Congressional elections. In addition, the extension of the 2nd District into Bibb County and the corresponding extension of the 11th District into Chatham County, with all of the necessary attendant changes, violate all reasonable standards of compactness and contiguity.

Given these considerations, which were debated throughout the session, the General Assembly chose to significantly increase the percentage of black population in the 2nd District from 39% in the former plan to 49.15% (actually, 50% when the military population is excluded) in Act No. 638. The voting age population in this District has been increased from 35% in the former plan to 45% in Act No 638 (again, excluding the military population,

46%). In accordance with the Justice Department's objection, this reconfiguration is "a good faith attempt to recognize the concentrations of black voters in the southwest" while, at the same time, consciously insures the continued viability of the 11th Congressional District as an effective majority minority district.

CONCLUSION

Accordingly, for the above reasons, we urge that Act No. 638 be approved by the United States Attorney General pursuant to Section 5 of the voting Rights Act of 1965, as amended. The redrawn Congressional plan satisfies all three objections of the Justice Department to Act No. EX27, enhances minority voting strength, and does not cause a potential dilution of the ability of black voters to elect a candidate of their choice.

Sincerely,

/s/ Michael J. Bowers
MICHAEL J. BOWERS
Attorney General

MJB:mhc
Enclosures

cc: Honorable Zell Miller
Honorable Pierre Howard
Honorable Thomas B. Murphy
Honorable Eugene P. Walker
Honorable Bob Hanner
Honorable Max Cleland
Mr. Sewell R. Brumby
Ms. Linda Meggars

Plaintiff's Exhibit 4

[seal] U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General
Washington, D.C. 20035

March 20, 1992

Mark H. Cohen, Esq.
Senior Assistant Attorney General
Department of Law
132 State Judicial Building
Atlanta, Georgia 30334

Dear Mr. Cohen:

This refers to Act No. 616 of the 1992 Regular Session, which provides for the 1992 redistricting of House districts; and Act No. 615 of the 1992 Regular Session, which provides for the 1992 redistricting of Senate districts; submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was received on February 21, 1992; supplemental information was received on February 26, 27 and March 3, 4, 13, 17, 1992.

This also refers to Act No. 638 of the 1992 Regular Session, which provides for the 1992 implementation of an increase from ten to 11 Congressional seats for the State of Georgia with the 1992 redistricting of the Congressional districts, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was received on March 4, 1992; supplemental information was received on March 13, 17, 1992.

We have carefully considered the information you have provided, as well as Census data and information and comments from other interested persons. As you are aware, on January 21, 1992, the Attorney General interposed an objection to several areas of each of the House, Senate, and Congressional plans that the state had submitted for Section 5 review. In analyzing the instant remedial plans, we are mindful of our bases for interposing the original objections in an effort to determine whether the state has overcome such concerns. In addition, we also have an obligation to investigate and analyze the motivations of the state legislature with regard to the second round of redistrictings. It is in that light that we have determined that in a number of areas of the state, the legislature has remedied our objections. However, the following explanation is meant to provide guidance to the state with regard to those areas in all three submitted plans that continue to be a problem under Section 5.

The House Plan

In response to our objection to the failure of the state to recognize black population concentrations in the Peach/Houston area, the state submitted proposed District 140, referred to as the "Heart of Georgia" district. While the state maintains that this district is the "first viable rural Georgia minority House district in the modern history of the General Assembly," the fact is that the adopted plan continues to fragment and submerge significant black population concentrations. The state chose to draw the "Heart of Georgia" district into Peach County and divided the Houston County black voters among

three majority white districts. Consequently, the proposed plan minimizes overall black voting strength in the heart of Georgia in an effort to protect an incumbent legislator. The state fails to articulate a legitimate nonracial reason for rejecting alternative plans which remedy the fragmentation and provide two viable black voting age majority districts in this area.

In the proposed House plan for the rural southwest region, we originally found that black concentrations were fragmented to ensure the re-election of white incumbents and that an additional black district could have been drawn. In response to our objection, the state simply moved black population into District 159 at the expense of the black population of proposed District 158. We are aware that there were alternative plans presented to the legislature that remedy this fragmentation and which provide two black voting age majority districts in this area. Similarly, in the Muscogee/Chattahoochee area, the state failed to remedy our concern that three viable black voting age majority districts were not drawn in this area due to inappropriate incumbency considerations.

In the Richmond/Burke Counties area, while the state appears to have cured our earlier objection to the fragmentation of minorities in Burke County, the state inexplicably includes a land bridge through Richmond County which connects Jefferson County with Columbia County (proposed District 120). Concerns were raised that the state's configuration in this area was designed to maintain a white majority legislative delegation rather than have an equal number of white and black legislators on the Richmond County delegation. While the state acknowledges that such a configuration would have this

effect on the delegation, the state has yet to explain adequately its boundary choice in this instance.

The Senate Plan

The Senate plan also continues to include instances in which the concerns of the incumbents were placed ahead of black voting potential. For example, in the DeKalb/ Clayton Counties area it appears that protection of incumbents motivated the legislature to combine portions of Clayton County with Fulton County resulting in fragmentation of concentrations of black residents into four surrounding white majority districts in the Atlanta/ DeKalb metro area (Districts 34, 42, 44, and 55). By failing to combine the black growth communities in Clayton County with the residents of the black neighborhoods in DeKalb, the state has minimized black voting potential in DeKalb County where three rather than two black voting age majority districts would have been the logical result of boundary lines that fairly recognize black voting strength in that area.

In the southwest portion of the state, from Meriwether and Peach/ Houston Counties to the Florida border, the state continues to fragment the black population concentrations by refusing to adopt alternative approaches in the Senate plan which would remedy this fragmentation and provide three districts with majority black voting age populations.

The Congressional Plan

As you know, the state's first proposed plan was rejected amid general concerns that the Georgia legislative leadership had been predisposed to limit black voting potential to two black majority voting age population districts. This concern continues with respect to the state's present redistricting plan. For example, our analysis of the process indicates that the primary controversy surrounding the Congressional plan was whether the Department's objection contemplated the drawing of a third black voting age majority district and that, while the Senate appeared to be willing to try to recognize black voting potential in the state, the House vigorously rejected such a concept.

For example, the submitted plan minimizes the electoral potential of large concentrations of black population in several areas of the state. Specifically, we note that alternatives, including one adopted by the Senate, included a large number of black voters from Screven, Effingham and Chatham Counties in the 11th Congressional District. However, due to unyielding efforts on behalf of the House members, this configuration was abandoned and no legitimate reason has been suggested to explain the exclusion of the second largest concentration of blacks in the state from a majority black Congressional district.

In southwest Georgia, our review of the proposed remedial plan indicates a similar concern. Although the submitted plan has increased the black percentage in the 2nd Congressional District, it continues the exclusion of large black population concentrations in areas such as

Meriwether, Houston, and Bibb Counties from this district. In addition, the expressed reluctance to split counties also appears pretextual given the original announcement by the redistricting leadership that such concerns should not be used to prevent the drawing of viable black districts. The state's willingness to split counties and cities in other areas of the state suggests an uneven application of its own stated criteria which appears designed to minimize black voting potential.

Several alternative redistricting approaches which created a southwest district with a majority black voting age population by including additional black communities such as the City of Macon and which did not diminish the effectiveness of the minority electorate in the 11th by including Chatham, were suggested to the legislature during the redistricting process. Despite the existence of the alternatives, however, the state refused to recognize potential black voting strength in the state and has failed to explain adequately the choices made during this round of Congressional redistricting.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the state's burden has been sustained in this instance with respect to the three proposed plans under review. Therefore, on behalf of the Attorney General, I must object to the 1992 redistricting plans for Georgia State House, Senate and Congressional districts to the extent that each incorporates the proposed configurations for the areas discussed above.

We note that under Section 5 you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the proposed 1992 House, Senate and Congressional redistricting plans have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, you may request that the Attorney General reconsider the objections. However, until the objections are withdrawn or a judgment from the District of Columbia Court is obtained, the 1992 redistricting plans for Georgia House, Senate and Congressional districts continue to be legally unenforceable. *Clark v. Roemer*, 59 U.S.L.W. 4583 (U.S. June 3, 1991); 28 C.F.R. 51.10 and 51.45.

To enable us to meet our responsibility to enforce the Voting Rights Act, please inform us of the action the State of Georgia plans to take concerning these matters. If you have any questions, you should call Sandra Coleman (202-307-3718), Deputy Chief of the Voting Section.

Sincerely,

/s/ John R. Dunne
John R. Dunne
Assistant Attorney General
Civil Rights Division

Plaintiff's Exhibit 16A

SPLIT PRECINCTS IN 1992 GEORGIA CONGRESSIONAL REDISTRICTING

District	Number of Split Precincts
1	11
2	28
3	16
4	1
5	1
6	9
7	9
8	25
10	0
11	31

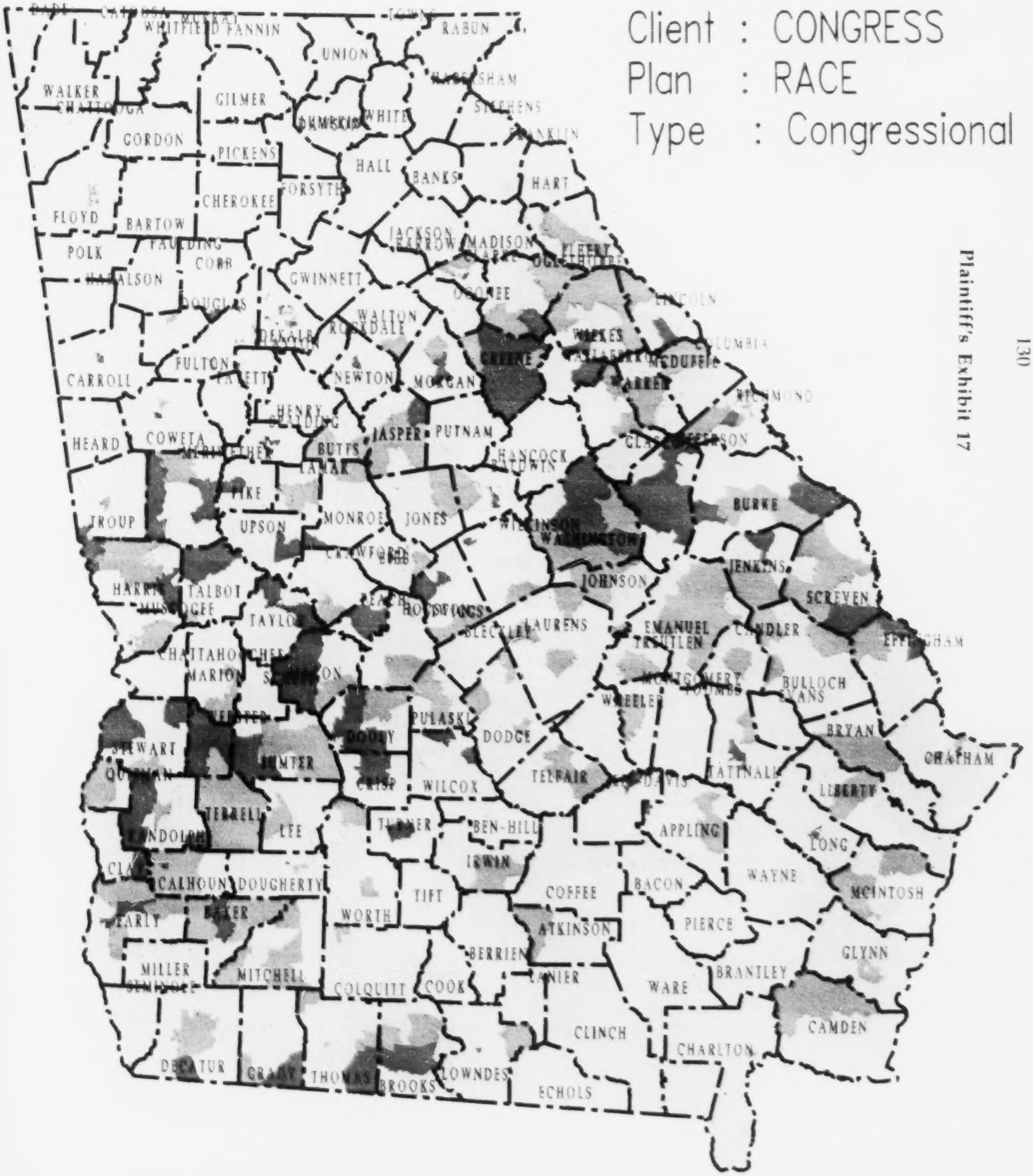
Plaintiff's Exhibit 16B

HISTORY OF SPLIT MUNICIPALITIES IN GEORGIA CONGRESSIONAL REDISTRICTING 1971-1992

Year	Number	Identity	% Increase Over 1971	% Increase Over 1982
1971	2	Atlanta, Dalton	–	–
1982	5	Atlanta Loganville Roswell Snellville Union City	150%	–
1992	31	Albany Atlanta Augusta Byron Centerville Cordele Duluth Fort Valley Lawrenceville Leesburg Macon Manchester Marietta Milledgeville Moultrie Norcross Payne Perry Port Wentworth Riverdale Roberta Savannah Smyrna Snellville	1,450%	520%

Sugar Hill
Suwanee
Thunderbolt
Valdosta
Warner Robins
Washington
Woodstock

Plaintiff's Exhibit 17



PLAINTIFF'S EXHIBIT 24

TABLE 1

ELEVENTH CONGRESSIONAL DISTRICT POPULATION CONCENTRATION BY COUNTY

County	Total Pop.	% of 11th District's Total Pop.	Total Black Pop.	% Black Pop. In 11th Dist.[1]	% Of 11th Dist. Total Black Pop.
DeKalb (Split)	207,112	35.3%	154,512	74.6%	41.1%
Richmond (Split)	93,004	15.9%	61,408	66.0%	16.3%
Chatham (Split)	72,505	12.4%	60,963	84.1%	16.2%
Baldwin (Split)	30,786	5.3%	14,955	48.6%	4.0%
Burke	20,579	3.5%	10,756	52.3	2.9%
Washington	19,112	3.3%	9,874	51.7%	2.6%
Jefferson	17,408	3.0%	9,700	55.7%	2.6%
Butts	15,326	2.6%	5,438	35.5%	1.4%
Putnam	14,137	2.4%	4,748	33.6%	1.3%
Screven	13,842	2.4%	6,209	44.9%	1.7%
Greene	11,793	2.0%	5,887	49.9%	1.6%
Henry (Split)	11,450	2.0%	584	5.1%	0.2%
Wilkinson	10,228	1.7%	4,302	42.1%	1.1%
Hancock	8,908	1.5%	7,077	79.4%	1.9%
Jasper	8,453	1.4%	2,940	34.8%	0.8%
Jenkins	8,247	1.4%	3,412	41.4%	0.9%
Twiggs (Split)	7,096	1.2%	3,996	56.3%	1.1%
Warren	6,078	1.0%	3,656	60.2%	1.0%
Wilkes (Split)	4,472	0.8%	3,046	68.1%	0.8%
Glascock	2,357	0.4%	298	12.6%	0.1%
Taliaferro	1,915	0.3%	1,167	60.9%	0.3%
Effingham (Split)	1,387	0.2%	657	47.4%	0.2%
Total	**586,195**	**100.0%**	**375,585**		**100.0%**

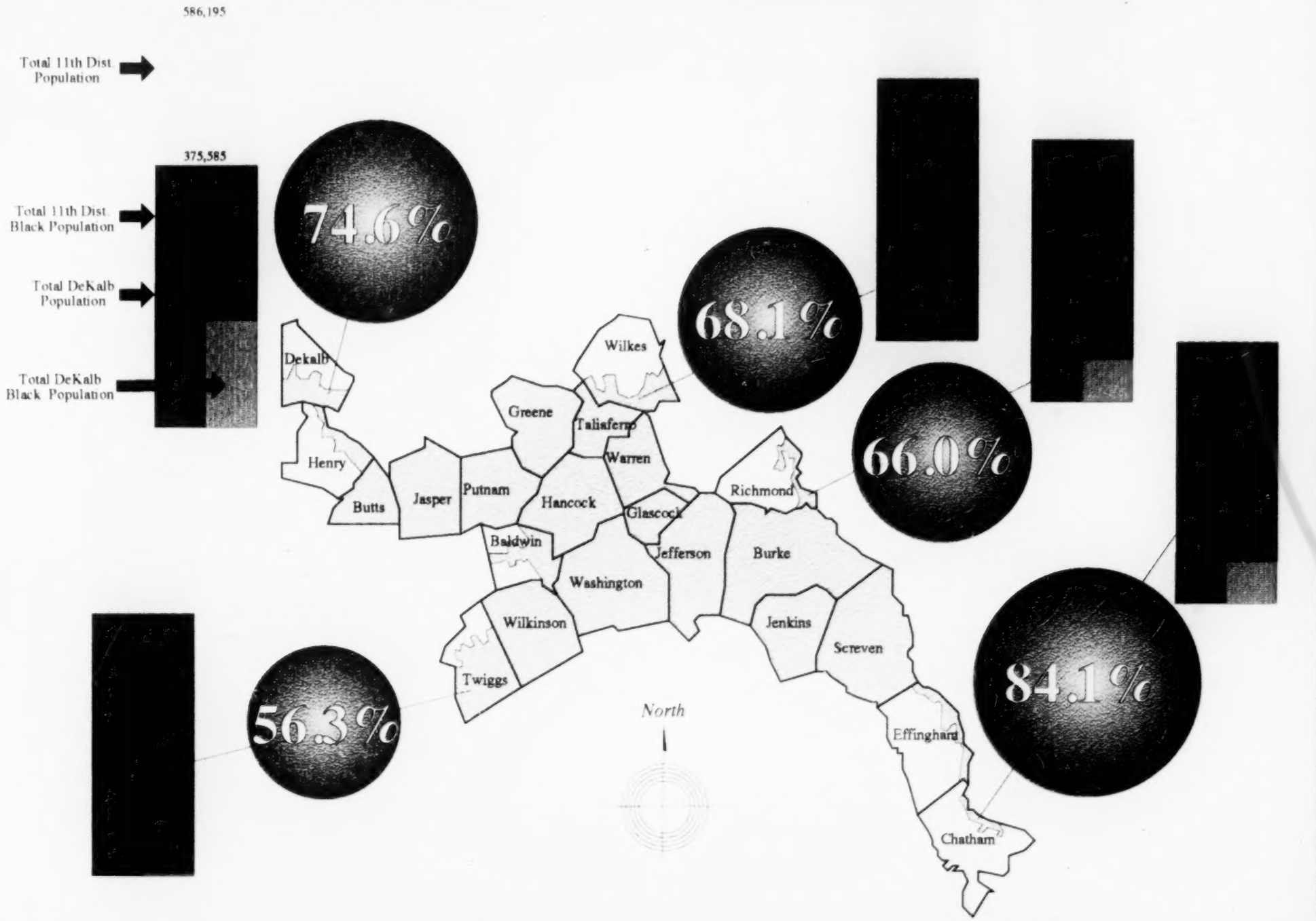
[1]Total black population in county (or 11th District portion) divided by total population in county (or 11th District portion).

TABLE 2

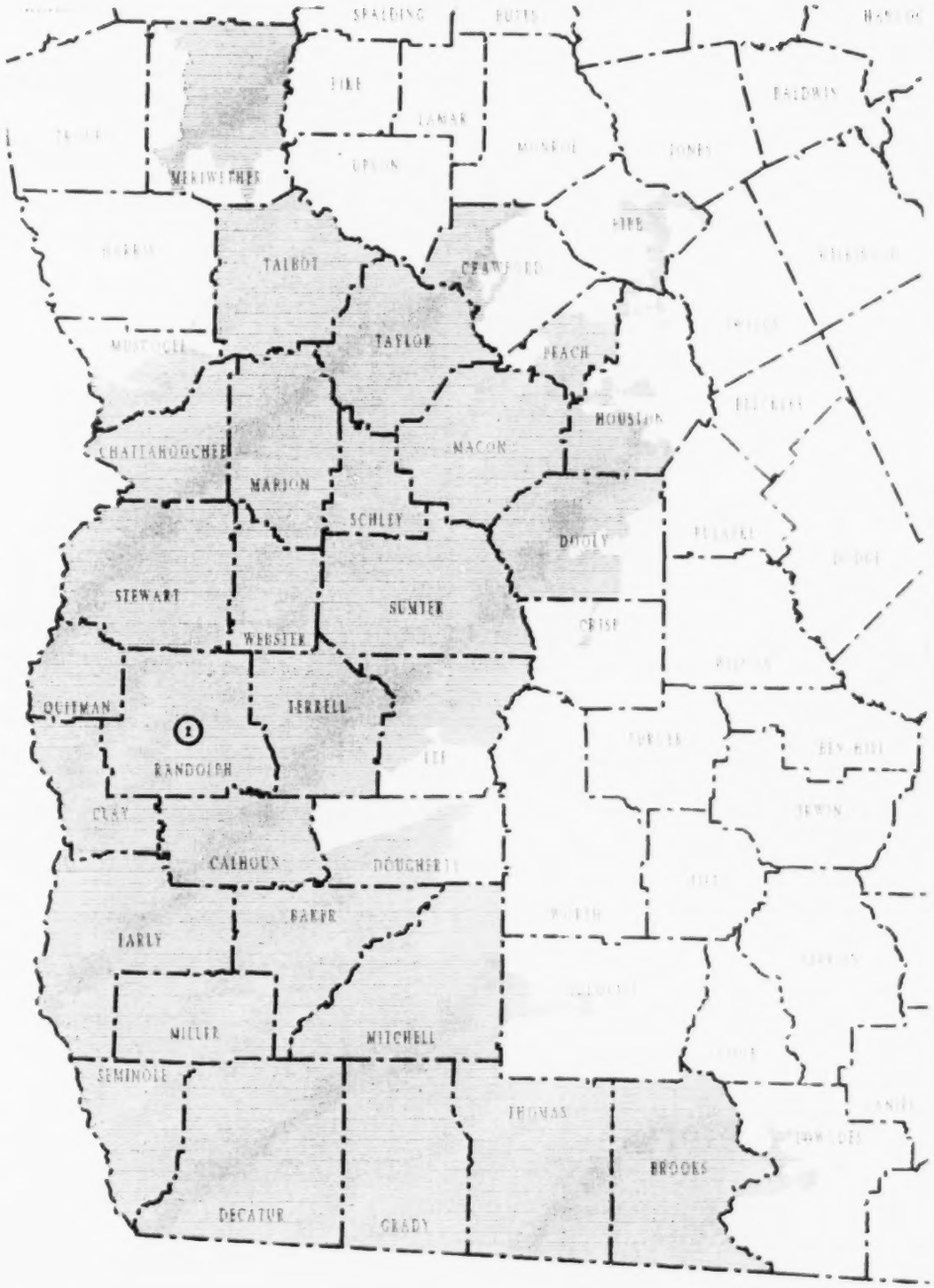
LAND AREA OF COUNTIES IN ELEVENTH CONGRESSIONAL DISTRICT

County	Square Mile	% of County
DeKalb (Split)	122.83	45.8%
Richmond (Split)	89.66	27.66%
Chatham (Split)	29.47	6.8%
Baldwin (Split)	142.49	55%
Burke	830.6	
Washington	680.5	
Jefferson	527.7	
Butts	186.6	
Putnam	344.5	
Screven	648.5	
Greene	388.4	
Henry (Split)	90.9	28.2%
Wilkinson	446.6	
Hancock	473.3	
Jasper	370.5	
Jenkins	349.8	
Twiggs (Split)	253.2	70.3%
Warren	285.5	
Wilkes (Split)	110.2	23.4%
Glascock	144.2	
Taliaferro	195.4	
Effingham (Split)	72.8	15.2%
Total	**6,783.65**	

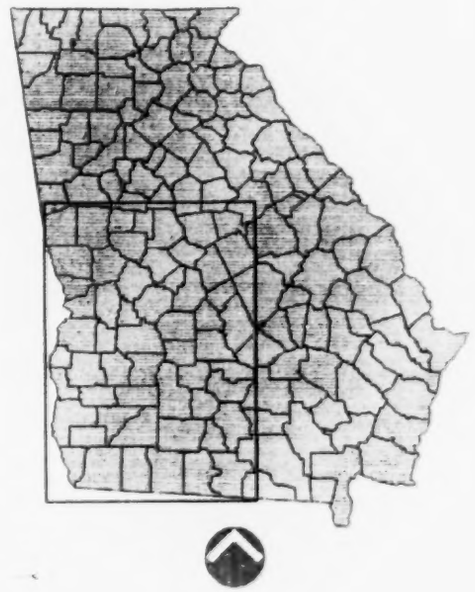
Georgia Eleventh District Population Distribution



Plaintiff's Exhibit 29



Client : CONGRESS
Plan : C2
Type : Congressional



Reapportionment Services Office
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Georgia General Assembly

TABLE 6

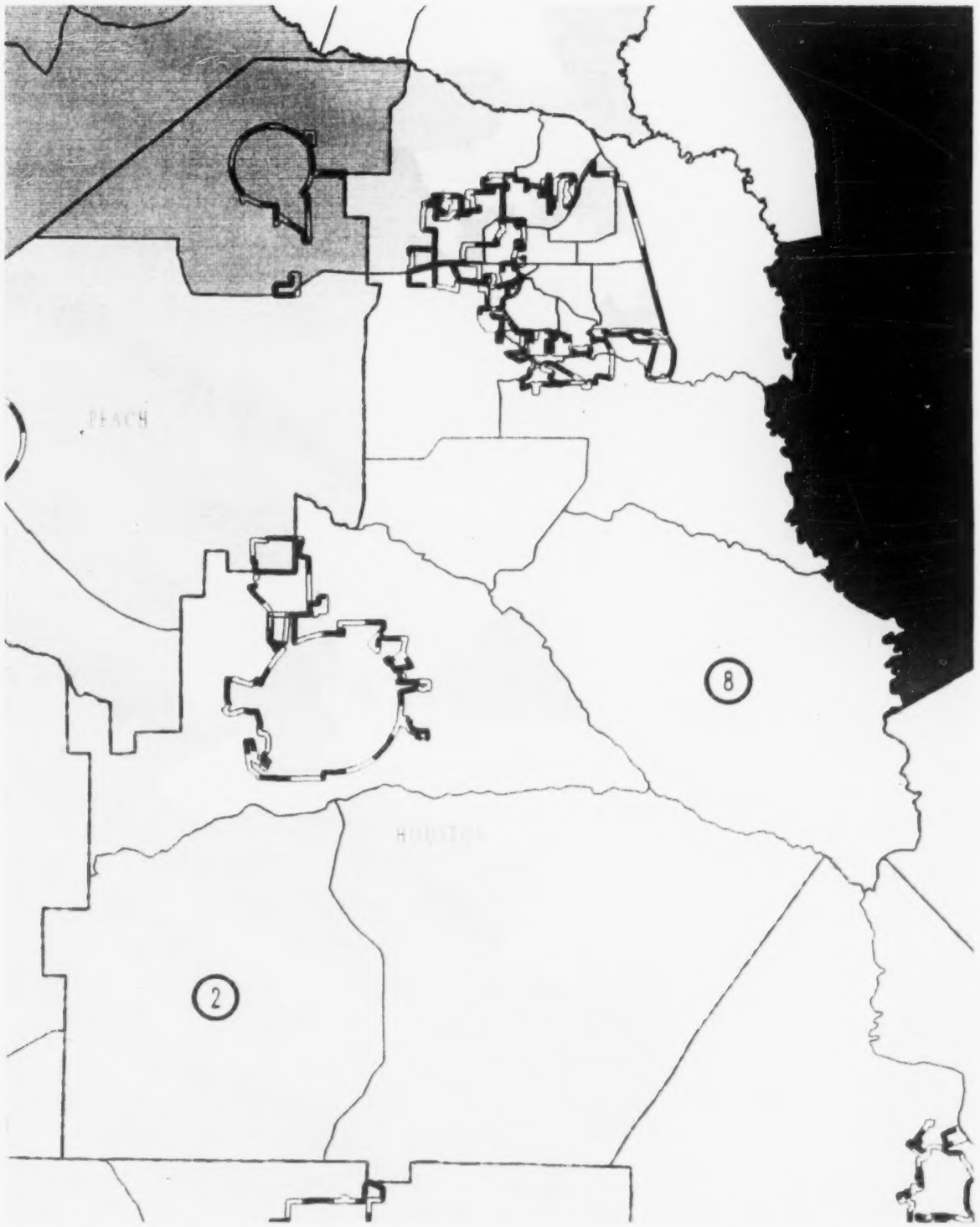
SPLIT COUNTIES OF THE SECOND CONGRESSIONAL DISTRICT

County	Total County Pop.	Total County Pop. In Dist. 2	% of County Pop. In Dist. 2	% of Dist. 2 Pop.	Total County Black Pop.	Pop. In County/% Black	Total Black Pop. In Dist. 2	% County Black Pop. In Dist. 2	Pop. in 2nd/% Black	Pop. Outside 2d/% Black	% Total Black Pop. In 2nd
Bibb	149,697	74,401	49.6%	12.6%	62,526	41.7%	51,547	82.4%	69 %	14.5%	15.4%
Colquitt	36,645	8,490	23.2%	1.4%	8,861	24.2%	5,736	64.7%	67.6%	11.1%	1.7%
Crawford	8,991	2,291	25.5%	0.4%	2,757	30.7%	1,665	60.4%	72.7%	16.5%	.5%
Crisp	20,211	7,224	36.1%	1.2%	8,153	40.3%	6,888	84.5%	95.3%	9.7%	2.06%
Dooly	9,901	8,922	90.1%	1.5%	4,852	49%	4,594	94.7%	51.4%	26.4%	1.4%
Dougherty	96,311	52,574	54.6%	8.9%	48,387	50.2%	40,890	84.5%	77.8%	17 %	12.2%
Houston	89,208	22,545	25.3%	3.8%	19,376	21.7%	11,523	59.5%	51.1%	11.8%	3.4%
Lee	16,250	4,117	25.3%	0.7%	3,135	19.3%	2,506	79.9%	60.9%	5.2%	.7%
Lowndes	75,981	24,038	31.6%	4.1%	24,241	31.9%	16,026	66.1%	66.7%	39.2%	4.8%
Meriwether	22,411	14,744	65.8%	2.5%	9,989	44.6%	7,852	78.6%	53.3%	27.9%	2.3%
Muscogee	179,278	89,814	50.1%	15.2%	68,161	38%	59,265	86.9%	66. %	10 %	17.7%
Peach	21,189	10,573	49.9%	1.8%	10,075	47.5%	7,845	77.9%	74.2%	21 %	2.34%

PLAINTIFF'S EXHIBIT 29A

County	**Pop. In** County/% Black	**Pop. in** 2nd/% Black	**Pop.** Outside 2d/% Black	**% County** Black Pop. In Dist. 2
Bibb	41.7%	69 %	14.5%	82.4%
Colquitt	24.2%	67.6%	11.1%	64.7%
Crawford	30.7%	72.7%	16.5%	60.4%
Crisp	40.3%	95.3%	9.7%	84.5%
Dooly	49%	51.4%	26.4%	94.7%
Dougherty	50.2%	77.8%	17 %	84.5%
Houston	21.7%	51.1%	11.8%	59.5%
Lee	19.3%	60.9%	5.2%	79.9%
Lowndes	31.9%	66.7%	39.2%	66.1%
Meriwether	44.6%	53.3%	27.9%	78.6%
Muscogee	38%	66. %	10 %	86.9%
Peach	47.5%	74.2%	21 %	77.9%

Plaintiff's Exhibit 32



Client : CONGRESS
Plan : C1992
Type : Congressional

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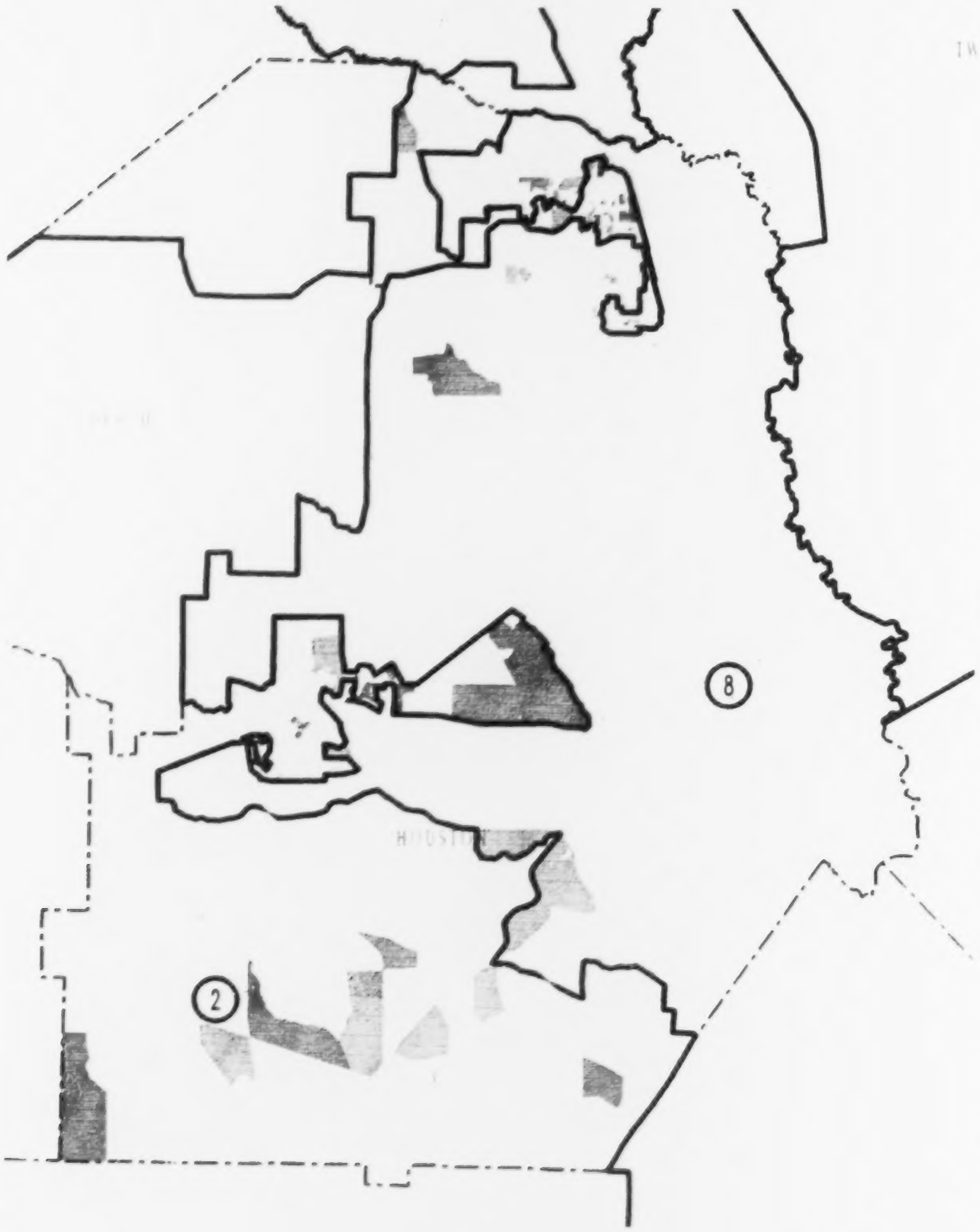
Georgia General Assembly

Plaintiff's Exhibit 38



Client : CONGRESS
Plan : C1992
Type : Congressional

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